

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
FOR THE COUNTY OF YAVAPAI

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2012 MAR -7 AM 8:56

SANDRA K. MARKHAM, CLERK
BY: Jaqueline Harkman

STATE OF ARIZONA,)

Plaintiff,)

vs.)

JAMES ARTHUR RAY,)

Defendant.)

Case No. V1300CR20108-0049

Court of Appeals

Case No. 1 CA-CR 11-0895

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WARREN R. DARROW

ORAL ARGUMENT/EVIDENTIARY HEARING

RE PENDING MOTIONS, DAY ONE

NOVEMBER 9, 2010

Camp Verde, Arizona

ORIGINAL

REPORTED BY
MINA G. HUNT
AZ CR NO. 50619
CA CSR NO. 8335

Mina G. Hunt

(928) 554-8522

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
2 FOR THE COUNTY OF YAVAPAI
3
4 STATE OF ARIZONA,)
5 Plaintiff,)
6 vs) Case No. V1300CR20108-0049
7 JAMES ARTHUR RAY,) Court of Appeals
8) Case No. 1 CA-CR 11-0895
9 Defendant.)
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Mina G Hunt (928) 554-8522

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1 APPEARANCES OF COUNSEL:
2 For the Plaintiff:
3 YAVAPAI COUNTY ATTORNEY'S OFFICE
4 BY: SHEILA SULLIVAN POLK, ATTORNEY
5 255 East Gurley
6 Prescott, Arizona 86301-3868
7 For the Defendant:
8 THOMAS K. KELLY, PC
9 BY: THOMAS K. KELLY, ATTORNEY
10 425 East Gurley
11 Prescott, Arizona 86301-0001
12 MUNGER TOLLES & OLSON, LLP
13 BY: LUIS LI, ATTORNEY
14 BY: TRUC DO, ATTORNEY
15 355 South Grand Avenue
16 Thirty-fifth Floor
17 Los Angeles, California 90071-1560
18 MUNGER TOLLES & OLSON, LLP
19 BY: MIRIAM L. SEIFTER, ATTORNEY
20 560 Mission Street
21 San Francisco, California 94105-2907
22
23
24
25

Mina G Hunt (928) 554-8522

1 Proceedings had before the Honorable WARREN R.
2 DARROW, Judge, taken on Tuesday, November 9, 2010,
3 at Yavapai County Superior Court,
4 Division Pro Tem B, 2840 North Commonwealth Drive,
5 Camp Verde, Arizona, before Mina G. Hunt, Certified
6 Reporter within and for the State of Arizona.
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PROCEEDINGS

THE COURT: This is V1300CR201080049, State of Arizona versus James Arthur Ray. Representing Mr. Ray this morning are Mr. Li, Ms. Do and Mr. Kelly.

Mr. Kelly?

MR. KELLY: And, Judge, Miss Seifter. And that's spelled for the transcriber S-e-i-f-t-e-r. Miriam Seifter from Munger, Tolls.

THE COURT: Thank you.

And I do have the written waiver. But Mr. Ray is waiving his appearance for this hearing; correct?

MR. KELLY: That's correct, Judge.

THE COURT: And representing the state is Ms. Polk.

MS. POLK: Thank you, Your Honor. Good morning.

THE COURT: I asked the bailiff to inquire what motion you wanted to take up first.

MR. KELLY: And, Judge, it was at our request. And, first of all, we would invoke the rule. And I believe any prospective witnesses have left the courtroom.

The curiosity from the defense team,
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obviously we know this is a Terrazas hearing and 404(b). But it relates to the scope of the evidence that will be presented. And perhaps we can hear from Ms. Polk as a brief outline as to the years of the incidents that she proposes under Terrazas to present testimony over the next several days. If we knew that, then perhaps we might have an objection or not.

THE COURT: Okay. Is there an agreement that the first matter we'll take up is the 404(b)?

Ms. Polk.

MS. POLK: Yes, Your Honor.

THE COURT: It was actually framed in terms of a motion in limine. But it is a Terrazas hearing. And I'd just like to hear if there are preliminary type issues.

First thing, Ms. Polk, I heard is some concern about invoking the rule. What's your position on that?

MS. POLK: Judge, we've asked the state's witnesses to already leave the courtroom.

THE COURT: Okay. So the rule will be invoked, then, in this hearing. And then I think maybe the best thing to do is if I could have an opening statement, a brief statement as to what the

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state intends to present.

MS. POLK: Yes. Thank you, Your Honor.

And, in fact, I have corresponded with Ms. Do about the state's witnesses, the witnesses that we intend to present at this hearing, as well as the general scope of the testimony.

The defendant has been charged with three counts of manslaughter, recklessly causing the deaths of Kirby Brown, James Shore and Liz Neuman. The state has the burden at trial of proving that the defendant was aware of and consciously disregarded a substantial and unjustifiable risk that the result would occur and that that disregard of the risk is a gross deviation from the standard of care that a reasonable person would observe.

The state will be offering testimony to illustrate for the Court the testimony that we intend to offer at trial with respect to the prior events. And specifically we'll be offering testimony from six witnesses who will discuss the sweat lodge ceremonies that the defendant, James Ray, conducted at Angel Valley resort from 2003 to 2009.

We're offering that testimony to show the defendant's requisite mental state, that he acted
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recklessly, that he disregarded a substantial and unjustifiable risk that the result would occur and that that disregard is a gross deviation from the standard of care of a reasonable person.

And it's through looking at the events that occurred during the defendant's sweat lodge ceremonies between 2003 and 2008 that we establish his requisite state of mind for 2009.

I'll note for the Court that we did file a pleading withdrawing our notice of intent to use 404(b) acts with respect to nonsweat lodge ceremony events. But we do intend to proceed with these sweat lodge ceremonies between 2003 and 2009.

The state will be offering six witnesses over the next couple of days, beginning with Amayra Hamilton, then Ted Mercer and Debby Mercer, Mark Rock and Vicky Rock. And then we'll be ending with the testimony of Detective Ross Diskin.

THE COURT: And just by way of introduction, the specific exception from character under 404(b), what would you be urging specifically?

MS. POLK: Judge, again, that the -- what happened between 2003 and 2008 is relevant to show that the defendant was aware of and disregarded a substantial and unjustifiable risk that the result

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1 would occur in 2009. And then additionally we are
2 offering the other acts to prove his intent, his
3 knowledge, his motive, and absence of mistake or
4 accident.

5 THE COURT: And I have when the pleadings have
6 been filed also. Thank you, Ms. Polk.

7 MS. POLK: Thank you, Judge.

8 THE COURT: Mr. Kelly.

9 MR. KELLY: Judge, and briefly. I guess
10 that's the problem is I believe the case law is
11 clear that these types of acts are not admissible
12 to show that Mr. Ray acted in conformity therewith.
13 But one of the noted exceptions has to be
14 established and under the Terrazas standard by
15 clear and convincing evidence. And we emphasize
16 that they have to be relevant to this criminal
17 recklessness that the state intends to prove at
18 trial.

19 Ms. Polk had mentioned through 2009. And
20 we would object during the Terrazas hearing as to
21 any testimony or evidence being presented as to
22 what allegedly occurred in 2009. It is not simply
23 to expedite this proceeding, but, as this court is
24 very aware, and Ms. Polk, we filed a motion to
25 change venue in this case based on the extensive

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1 media coverage. We believe it's incumbent upon the
2 defense to minimize any pretrial exposure, any
3 interpretation by the media as to what the actual
4 facts relating to the 2009 incident may be.
5 Because it's going to simply make it extremely
6 difficult to select a jury.

7 We have offered -- Ms. Do has offered for
8 Ms. Polk to make an offer of proof or enter into a
9 stipulation if some -- as to one of the identified
10 exceptions under 404(b). It's necessary to briefly
11 summarize the testimony as to what she believe the
12 2009 incident will show during trial.

13 But we would object to any witness
14 testifying throughout the course of this hearing as
15 to what happened in '09 because of the reasons I've
16 stated.

17 Finally, Judge, Ms. Polk included in her
18 list of witnesses the proposed testimony of
19 Detective Diskin as to 21 witnesses who -- and that
20 list is not exhaustive. She reserved the right to
21 add to potentially 21 witnesses he's going to
22 present testimony simply based on hearsay, that
23 apparently he's going to take the witness stand and
24 tell you what he believes these people told him in
25 regards to the 404(b) issue and Terrazas. And I

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1 believe either Ms. Do or Mr. Li will outline that
2 argument in more detail.

3 I guess those are our concerns, Judge.
4 We're ready to proceed with the understanding that
5 any testimony regarding 2009 is strictly prohibited
6 during this particular evidentiary hearing. And we
7 appreciate Ms. Polk's outline, which she suggests
8 the testimony will be.

9 I don't know if that helps clarify.
10 We're still kind of confused by this.

11 THE COURT: I have one question, and that is
12 whether you're saying the defense would be willing
13 to stipulate that there would be clear and
14 convincing evidence on various points, and then the
15 Court can make a legal decision on those points?

16 MR. KELLY: No. I was not clear, Judge. My
17 understanding in the pre-evidentiary communications
18 that I've reviewed and listening to Ms. Polk's
19 opening is that there may be some testimony as to
20 what happened in 2009. We object to any testimony
21 in that regard because we believe it's going to
22 taint the prospective jury pool.

23 We are willing to stipulate, if it's
24 necessary to provide some type of a summary as to
25 what the state believes the evidence will be in

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1 2009, she can make an offer of proof, or we may be
2 able to work out a stipulation throughout the
3 course of this hearing for your benefit.

4 But we would object to any witness
5 testifying as to what happened in 2009. That's a
6 matter reserved for the jury.

7 MR. LI: Your Honor, in 2009, just to put as
8 fine of a point on it as I can, is the charged
9 incident. And, essentially, what the state is
10 suggesting is we have a minitrial about the charged
11 incident when we're actually supposed to have a
12 hearing about prior acts.

13 If the Court looks at all of the case law
14 relating to 404(b) evidence, none of them provide
15 for a hearing relating to -- a minitrial relating
16 to the actual charged incident. All the cases do
17 is they suggest that the state make an offer of
18 proof as to what it's theory is. And -- you
19 know -- there is significant case law relating to
20 how specific they need to be. And they need to say
21 this is the exact hypothetical set of circumstances
22 that we're going to seek to prove at trial.

23 And, Your Honor, this is why these prior
24 acts are relevant. And first we have to prove, the
25 state. That these prior acts took place by clear

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1 and convincing evidence. It's not -- Terrazas says
2 nothing about whether the state is supposed to
3 prove up or have a minitrial about the actual
4 charged incident.

5 And that's the problem we're having with
6 2009 testimony. Because -- you know -- there is a
7 camera in the courtroom. There are reporters and
8 what have you. And we'd be putting on two
9 witnesses, three witnesses, to testify about what
10 is, essentially, going to be the subject of our
11 trial scheduled in February. And it's unfair,
12 essentially.

13 And if the Court feels that 2009
14 testimony should come in and that there should be a
15 full-blown examination of exactly what happened in
16 2009 for purposes of a prior-act hearing, then we
17 think the defense would have the right to call the
18 many, many witnesses who would contradict what the
19 state's theory is. So that's not what this hearing
20 is supposed to be about.

21 THE COURT: You're saying it's October 2009.
22 It's the event. That's what you're talking about.
23 When you're saying 2009, I didn't know if there
24 were other incidents that might come up other than
25 the event.

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1 But, Ms. Polk, with regard to October
2 2009 and how that evidence would relate to 404(b)
3 and Terrazas.

4 MS. POLK: Judge, specifically, State versus
5 Rose, 121 Ariz. 131, and State versus Sinbourne,
6 116 Az 403 -- both cases are cited in the state's
7 response to the defendant's motion in limine on the
8 404(b) acts. But those two cases specifically
9 provide that intent is proven by evidence of acts
10 of same or similar character because recurrence of
11 an act controverts the claim that it was done by
12 accident or mistake.

13 In other words, the state has the burden
14 to prove that these other acts, these prior acts,
15 are of the same or similar character to what has
16 occurred in the case in chief, the sweat lodge
17 ceremony in 2009.

18 Our burden to establish by clear and
19 convincing evidence is to establish by clear and
20 convincing evidence that the prior acts occurred.
21 And then our second burden is to establish that
22 they are admissible and relevant under Rule 403.
23 In order to show the relevance, we have to show
24 that connection between 2009.

25 The state does not intend to turn this

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1 into a minitrial. But the -- several of the -- we
2 have six witnesses, four of whom were present in
3 2009 and will testify about the similarities
4 between earlier sweat lodge ceremonies and what
5 happened in 2009. And, again, that is the state's
6 burden.

7 THE COURT: And the defense is suggesting
8 there might be a way to stipulate, make an offer of
9 proof, this is what the evidence will be with
10 regard to 2009. And it's a question I have seen
11 before. If you're going to prove a close
12 relationship or similar character, you've got to
13 know what happened -- what the state alleges
14 happened in the recent event or the event that's at
15 issue in order to have something to compare with
16 prior events.

17 That's the point, Mr. Kelly. And I don't
18 know how else -- there is of necessity some need
19 for that type of evidence, it would seem to me.

20 MR. KELLY: Judge, the issue is character
21 evidence under 404(b). And please keep in mind
22 that we dispute the facts as they're going to be
23 articulated by the state's witness.

24 THE COURT: Everyone understands that,
25 Mr. Kelly.

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1 MR. KELLY: And if the state's witness
2 indicates that a particular fact occurs in 2009,
3 that may be one out of 60 people who believe that
4 particular fact occurred. And I agree with Mr. Li
5 that this is not the place nor the time to try the
6 case in chief.

7 Now, we came here prepared to prove to
8 the Court, first of all, that these prior acts are
9 not relevant under 404(b), that they should not be
10 admitted at all; and, secondly, that the state
11 cannot prove by clear and convincing evidence under
12 the Terrazas standard.

13 What we're not prepared to do was conduct
14 a minitrial on the actual October 2009 incident.
15 And, again, the concern is not only the Court's
16 time and fairness, but also the extensive media
17 coverage, which can further taint the jury pool.

18 I recall the state's objection at the
19 beginning of this case to any attorneys speaking
20 about the facts in the case for that very purpose.
21 And now the State of Arizona through six witnesses
22 out of a four- or five-month trial is going to get
23 to prepare a miniversion as to what happened. And
24 the camera is here. I just don't think that's
25 fair.

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1 In resolution to offer up the connection
2 as suggested, the offer of proof or some
3 stipulation was suggested.

4 MR. LI: Your Honor, the cases don't provide
5 that the state has to prove -- have a minitrial and
6 prove the charged conduct by clear and convincing
7 evidence. It doesn't require that the Court make a
8 determination by clear and convincing evidence that
9 the charged conduct occurred and then look at the
10 prior acts and find by clear and convincing
11 evidence that those acts occurred and then make the
12 comparison.

13 What the cases requires is that the state
14 articulate what it's theory is clearly, what is
15 it's hypothetical theory, what does it think it's
16 going to prove at trial, what is the connection
17 between the charged conduct and the prior acts.

18 And then what the Court is supposed to do
19 at that Terrazas hearing is put on evidence about
20 the prior acts. And then the Court can find by
21 clear and convincing evidence whether or not those
22 prior acts occurred. And then the Court can make
23 the legal analysis based on the state's
24 articulation of what its theory is about does it
25 fall within a 404(b) exception. Is it more

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1 prejudicial than probative and all of the other
2 elements in the 404(b) hearing.

3 There is no -- there is absolutely no
4 precedence for the proposition that the Court's
5 required or that it's even helpful for the Court to
6 have a minitrial about the charged conduct.

7 What I would submit is that the state
8 should be required to articulate clearly what its
9 theory is. Ms. Polk has made an opening statement
10 in which she's identified -- I have not heard the
11 exceptions to the 404(b) evidence, but I understand
12 what the overall theory is. And that's the theory
13 upon which the various witnesses' testimony should
14 be gauged against, not what they're going to say
15 today about what happened during the charged
16 incident.

17 THE COURT: Mr. Li and Mr. Kelly, there are
18 instances where courts in the 404(b) context do get
19 into proof regarding the case at issue. And it has
20 to do with consolidation and cross-admissibility.
21 And those types of cases, if there is going to be a
22 consolidation and there is an argument of
23 cross-admissibility, the Court has to deal with
24 evidence that involves the matter at issue.
25 It's -- both of them are at issue.

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1 But when you have two different
2 incidents, say, and there is going to be a question
3 of cross-admissibility, it's very similar to 404(b)
4 analysis. And, essentially, there is a minitrial.
5 So there is precedent for this type of analysis.

6 And I'm really just kind of surprised not
7 seeing this briefed before, coming in now. I'm
8 ready to hear evidence, and you are raising a
9 concern about contamination of the jury pool.

10 Mr. Li.

11 MR. LI: Your Honor, we apologize that we
12 didn't brief this earlier. We didn't believe that
13 the state was going to proceed down this path
14 until -- and we didn't find out until last night.

15 THE COURT: Let me ask this: Have you
16 interviewed the witnesses that the state has
17 presented for this hearing?

18 MR. LI: One of them but none of the lay
19 witnesses. But if I could address the point the
20 Court just made? Those cases involved two charged
21 instances.

22 THE COURT: Yes, they do.

23 MR. LI: In which you're trying to decide
24 whether or not the two cases should be tried
25 together. In this case what we have is some

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1 charged conduct and conduct that took place in the
2 five years --

3 THE COURT: I understand that, Mr. Li. I do.
4 I'm saying there are times when you have a pretrial
5 hearing when you have to get into a minitrial type
6 hearing.

7 MR. LI: I understand. Your Honor, with
8 respect to the two charged cases, you need to
9 decide whether this particular case by clear and
10 convincing evidence can be combined with this
11 charged case.

12 In our case we would agree. Let me try
13 to articulate what I think the state's theory is.
14 I think the state's theory is that Mr. Ray was
15 reckless and that these -- the decedents died of
16 heat stroke or hyperthermia and that -- whatever
17 other factors they want to add into that. That's
18 the standard against which they need to meet.

19 The Court doesn't need to find by clear
20 and convincing evidence that any of that is true.
21 The Court can just say well, this is the standard
22 in terms of similarity that the state -- the burden
23 the state has to meet.

24 So putting on evidence about that
25 particular articulation of what the theory is

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1 doesn't move the ball anywhere. It takes more
2 time. It actually, frankly -- you know -- requires
3 us to respond. And there are the media concerns.

4 Because what you will end up having is
5 some lay witnesses, one or two of them, a few
6 sounds bytes on TV about their testimony before the
7 trial about matters that have absolutely nothing to
8 do with the issue that the Court has to decide.

9 The Court could decide this based on a
10 clear articulation of what the state's theory is.
11 We don't object. We think the state can articulate
12 whatever theory it wants to make. And we will
13 accept that that is the state's theory.

14 You know, what we won't accept, of
15 course, is that it's true. That's what the trial
16 is for. But we don't need to have a minitrial to
17 decide whether -- to help the witnesses craft a
18 theory for the state. The state needs to come in
19 here and tell us what they think the relevance is.

20 THE COURT: Ms. Polk.

21 MS. POLK: Thank you, Judge. I just want to
22 respond briefly to a couple of comments that were
23 made. First of all, there has been several
24 references to the presence of the media in this
25 proceeding and the suggestion that somehow the

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1 presence of the media should result in hamstringing
2 the state and what our evidence is.

3 I find that very objectionable. This
4 proceeding and the trial are about the pursuit of
5 what happened in October of 2009 at the Angel
6 Valley Resort in that sweat lodge ceremony. That's
7 what we need to be focused on.

8 The state has to prove that something
9 happened that day. And the question is was it a
10 tragic accident or was it a criminal act of
11 manslaughter? And to prove that it was a criminal
12 act, the state must prove that the defendant acted
13 recklessly, that he was aware of and disregarded a
14 substantial likelihood that that result would
15 occur.

16 The way we know that, the way we know
17 what happened in October of 2009 was not just a
18 tragic accident but was, in fact, a criminal act;
19 was, in fact, manslaughter; that, in fact, the
20 defendant acted recklessly is by looking at his
21 history of conducting sweat lodge ceremonies
22 between 2003 and 2009.

23 There is absolutely no support for the
24 defense's position that in proving to the Court,
25 meeting our burden under 404(b) that we somehow

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1 cannot talk about the events of 2009. There is no
2 legal support for that. And, in fact, there is
3 legal support for the theory that similar acts,
4 similar prior acts, establish lack of accident
5 because of their reoccurrence. And that's what --
6 part of what the state will be proving at today's
7 hearing.

8 I request, Judge, that we be allowed to
9 proceed. We've subpoenaed five witnesses for
10 today. And I request that we be allowed to proceed
11 and meet our burden of proof. The state has the
12 burden today. We have the burden at trial.

13 And the suggestion, again, that somehow
14 we should be hamstrung because the media is present
15 is very, very objectionable. We need to get to the
16 bottom of what happened in October of 2009. This
17 is one the first steps to get there. It's very
18 important for the jury to know what happened in
19 '03, '04, '05, '06, '07 and '08 when they have to
20 make that determination, did the defendant act
21 recklessly in 2009.

22 THE COURT: What I'm hearing the defense say
23 is this, Ms. Polk: You can make an offer of proof
24 and say this is what we intend to show happened in
25 the 2009 incident. Just list that. And then the

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1 pre2009 evidence would be assessed as it compares
2 to that avowal rather than having all of this
3 testimony right now.

4 Because of the briefing that talks about
5 how there has to be such a close identity, they
6 really have to be very similar acts. Because of
7 that I can see why the state would have some
8 concern about, well, we're going to show that, and
9 this is how we'll do that.

10 But the defense apparently is not
11 standing that strongly on that argument. They're
12 willing to take an offer of proof that just says
13 this is what we say we will prove and then the --
14 the 2009 incident. And then that can be compared
15 to pre2009 events, acts.

16 Why not proceed in that fashion?

17 MS. POLK: First of all, Judge, it's very late
18 in the game for us to agree on what that
19 stipulation would be, what that offer of proof
20 would be. I don't believe that we're going to get
21 there. We have witnesses ready to proceed. What's
22 the difference between my making an offer of proof
23 and having a witness on the stand who was there who
24 will be subject to cross-examination, have that
25 witness talk about pieces of 2009 and how they are

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1 similar to the events in prior years that that
2 particular witness observed?

3 I don't have one witness who would tie it
4 all together. This is not going to be a minitrial.
5 When this case proceeds to trial in February, we
6 probably will have 50 to 60 witnesses that we're
7 still trying to winnow them down.

8 But what we have today through our five
9 lay witnesses and then through Detective Diskin are
10 specific instances of things that occurred at the
11 ceremony in 2009 that tie -- will be similar to
12 things that happened in the earlier years.

13 I request that we proceed, Judge. Let's
14 call the first witness, and let's let her testify.

15 THE COURT: I have a question I want to ask
16 right now when we're still three months away from
17 trial and has to do with discovery. Ms. Polk, were
18 you unwilling to disclose the six witnesses you
19 were going to call today?

20 MS. POLK: No, Judge. I disclosed them -- I
21 can pull out the date. But I disclosed them
22 several weeks ago.

23 THE COURT: And it's telling me there is not
24 communication for whatever reason. And I don't
25 want to get into that in a lot of detail. But

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1 that's something that needs to happen in a case
2 such as this. Because this isn't the type of issue
3 to take up now. And people have been -- were
4 available to for interview. They should have been
5 interviewed in all likelihood. And now we're
6 trying to deal this issue right now.

7 There is a difference, Ms. Polk, between
8 having witnesses testify to an event and then -- as
9 opposed to the Court being provided a written offer
10 of proof or even an oral offer of proof recited by
11 an attorney. There is a big difference in that.

12 MR. LI: Your Honor.

13 THE COURT: Yes, Mr. Li.

14 MR. LI: With all due respect to Ms. Polk, we
15 have been asking for an offer of proof since -- I
16 don't even recall. Probably July, probably even
17 before then. And what we get back is not any
18 articulation of what the actual theory is. We will
19 put on evidence relating to 2005, 2006, 2007.
20 There was a time -- and we briefed this issue. We
21 actually filed opposing papers back and forth about
22 whether the tragic suicide of somebody at another
23 event should be admissible, whether an arrow
24 incident should be admissible to this case.

25 We actually filed our papers against

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1 that. The state opposed our objection, and then we
2 filed our replies. And then a few weeks before
3 trial the state withdrew its decision to put on
4 that type of evidence.

5 And with all due respect, we have tried.
6 And, I think, by and large we are communicating
7 relatively well. There is this tendency in this
8 case which makes it very difficult for us to
9 litigate -- this tendency in this case not to
10 articulate, to hold the fire and not articulate and
11 then just throw up a witness and see what they're
12 going to say.

13 I don't think that's how this hearing
14 should be held. I don't want to -- this is what's
15 made this case very difficult. This is what has
16 made all this motion practice, including our
17 request for the expert notes, including our request
18 for the ability to interview various folks. And we
19 don't want to trouble the Court with all of our
20 motions relating to this stuff.

21 What happens is we end up in these kinds
22 of situations. And the defense is put in the
23 position of either having to say okay, fine. You
24 haven't told us anything, and now you just want to
25 throw folks up and have the hearing immediately,

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1 and we don't get to object to anything. Or we have
2 to raise a stink every now and again. And I don't
3 like doing it. And I don't want to do it. We've
4 made repeated efforts with the state to try to work
5 things out but to no avail.

6 THE COURT: Well, I certainly appreciate
7 written motions. That's a big part of my job. And
8 I prefer to have written motions in advance with
9 good briefing rather than come out, expect to
10 listen to evidence and then have this type of a
11 legal issue presented.

12 MR. KELLY: Judge, I realize people are
13 waiting. But I also understand -- I looked at your
14 minute entry. This matter is set for trial between
15 February 16 and June 10. So I apologize for
16 inconveniencing witnesses. But I think there are
17 bigger issues.

18 And for the first time I heard Ms. Polk a
19 moment ago indicate that she wants to try my client
20 for events occurring between 2003 and 2009. And I
21 believe, we believe, that this trial that's four
22 months estimated length in time, was solely on the
23 2009 incident until just a moment ago that the
24 prior act if admissible -- we're not conceding
25 that. It would be limited in scope.

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1 Because if we're going to go back to 2003
2 and try every sweat lodge -- and I'm somewhat
3 facetious. If the state is going to call a witness
4 who says it got hot in there and I got sick, and
5 the defense is going to call 10 witnesses who say
6 it got hot in there and it was the greatest
7 experience of my life. And so this four-month time
8 frame becomes three times that amount in the jury
9 trial.

10 So -- you know -- this is our first
11 evidentiary hearing. And I think discussing the
12 scope of this evidence -- and this is the first
13 I've I heard that, that somehow the state's theory
14 of my client's manslaughter charge in 2009 is
15 cumulative recklessness, through the prior six
16 years he developed the knowledge that made him
17 criminally liable in '09. I would submit that
18 that's a novel theory and not admissible under 404.

19 That is clearly -- and I do have a case
20 from 2008, State v. Anthony, where the Supreme
21 Court says that the prior bad acts are not
22 admissible to show that he acted in conformity
23 therewith. And that's what we're trying to do.
24 They have to, as they started this hearing, show
25 one of the exceptions to the character evidence.

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1 So that's a whole other problem that I think needs
2 to be discussed during the next two days.

3 And I apologize for inconveniencing the
4 witnesses. But I'm greatly concerned if Mr. Li and
5 Ms. Do and I now have to develop a defense to
6 things that happened back in 2003.

7 THE COURT: Well, we're going to deal with one
8 thing at a time. Today we have a 404(b) hearing
9 set.

10 Ms. Polk.

11 MS. POLK: Your Honor, I just request that we
12 proceed. These are delay tactics. I'm not going
13 to respond to much of what Mr. Li said except to
14 say I completely disagree. I don't think it's
15 appropriate at this hearing to get into who said
16 what.

17 But the state filed its response on
18 August 2 of 2010 clearly listing the events, the
19 404(b) events, that we hope to introduce at the
20 trial. We then filed the bench memorandum on
21 October 31st withdrawing the nonsweat lodge
22 ceremony event indicating that we intended to
23 proceed.

24 The defense has been on full notice. I
25 think we need to proceed. We are a couple months

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1 from trial. This evidence is very, very important.
2 We have three days set aside. Let's hear what the
3 witnesses have to say so that the Court can make
4 the appropriate ruling with respect to the 404(b)
5 evidence.

6 THE COURT: Thank you.

7 MR. KELLY: Judge, it's not a delay tactic.

8 THE COURT: Mr. Kelly, you're entitled to say
9 that. I understand. That's one thing that's not
10 going to happen in this case. There are not going
11 to be gratuitous, denigrating comments. There just
12 aren't from either side.

13 I'm not saying we've gotten to that
14 threshold, Ms. Polk. I'm not saying that. But
15 I've seen in the briefing what I would say have
16 been gratuitous and denigrating remarked. It's
17 just not going to happen in this case. It is not.

18 I have to say I do understand the defense
19 point about having an offer of proof and working
20 from that. It would seem to be an efficient way to
21 proceed. However, I don't see that there has been
22 communication and interviewing such that that could
23 have been obviated from either side. So we are
24 going to proceed with the evidence today.

25 Of course, I'll remind everybody Rule 104
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1 applies. This is a pretrial setting. The rules of
2 evidence are relaxed in that context. And we'll
3 proceed with the evidence.

4 MS. POLK: Thank you, Your Honor. The state
5 calls Amayra Hamilton.

6 THE COURT: Ma'am, please step to the front of
7 the courtroom where the bailiff is directing you.
8 Raise your right hand and be sworn by the clerk.

9 DIVERA G. HAMILTON,
10 having been first duly sworn upon her oath to tell
11 the truth, the whole truth, and nothing but the
12 truth, testified as follows:

13 THE COURT: Please be seated here at the
14 witness stand.

15 Ma'am, would you please begin by stating
16 and spelling your full name.

17 THE WITNESS: My full name legally is Divera
18 G. Hamilton; D-i-v-e-r-a, G. Hamilton,
19 H-a-m-i-l-t-o-n.

20 THE COURT: Thank you.

21 Ms. Polk?

22 MS. POLK: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MS. POLK:

25 Q. Good morning, Mrs. Hamilton. Please tell
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1 The Court what your business is.
 2 **A. We have a spiritual retreat center**
 3 **located just outside of Sedona.**
 4 **Q.** What is that center called?
 5 **A. It's called Angel Valley Spiritual**
 6 **Retreat Center.**
 7 **Q.** When you say located outside of Sedona,
 8 would give the Court an idea geographically where
 9 your center is.
 10 **A. Geographically we are a couple miles**
 11 **outside of the Sedona city limits. We are two**
 12 **miles off 89A in the direction of Cottonwood**
 13 **between Sedona and Page Springs.**
 14 **Q.** The two miles of road from 89A to your
 15 center -- is that dirt or paved?
 16 **A. That's a dirt road.**
 17 **Q.** Approximately how long -- can you
 18 describe for the Court what kind of road that is.
 19 **A. It's a dirt road. It's pretty wide.**
 20 **It's easy to pass. It's windy. It's going down.**
 21 **The surface is, well, dirt road.**
 22 **Q.** Do you have cell phone service at your
 23 center?
 24 **A. Limited.**
 25 **Q.** What is the purpose of the Angel
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1 Valley -- is it Angel Valley resort?
 2 **A. No. It's Angel Valley Spiritual Retreat**
 3 **Center.**
 4 **Q.** Center. What is the purpose of your
 5 retreat center?
 6 **A. The purpose of the retreat center is to**
 7 **have people that come to Angel Valley -- both**
 8 **individuals and groups -- for -- to do some kind of**
 9 **form of working on their spiritual growth.**
 10 **Q.** How long have you managed that center?
 11 **A. We came there in 2002. And the first**
 12 **little period was preparation. But we have been in**
 13 **operation since 2003.**
 14 **Q.** When you say "we," who else are you
 15 referring to?
 16 **A. My husband, who is co-owner and**
 17 **coinitiator of the project. And that's the**
 18 **essence. Besides we are a 501(c)(3), a spiritual**
 19 **religious organization. So we have a board for the**
 20 **ministry. That is, basically, the spiritual,**
 21 **philosophical main part of it.**
 22 **Q.** What is your husband's name?
 23 **A. Michael Hamilton.**
 24 **Q.** In 2003 did you begin doing business with
 25 James Ray?

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1 **A. We did.**
 2 **Q.** How did you meet James Ray?
 3 **A. There was a person in Sedona by the name**
 4 **of Ed Lee. He has job as kind of doing**
 5 **coordinating work for people who were looking for**
 6 **ventures. And he contacted us that he had a person**
 7 **who was looking for a place where he could do a**
 8 **sweat lodge and a Vision Quest.**
 9 **And we said sure. Come. That was in**
 10 **August of 2003. And it was regarded an event that**
 11 **he wanted to do in November of 2003. His main**
 12 **event would take place in Enchantment Resort. And**
 13 **for the sweat lodge and for the Vision Quest he was**
 14 **looking for a place, and we decided to do that, and**
 15 **we did.**
 16 **Q.** And how many years subsequent to that did
 17 you do business with James Ray?
 18 **A. Since 2003 once a year every year until**
 19 **2009.**
 20 **Q.** You mentioned a Vision Quest?
 21 **A. Yes.**
 22 **Q.** The first year was part of the program on
 23 site and part off site at the Enchantment?
 24 **A. The main part of the program was off site**
 25 **in Enchantment. And they came to Angel Valley for**
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1 **the sweat lodge ceremony and for the Vision Quest.**
 2 **Q.** Did that change over the years?
 3 **A. Yes. The next year he came to Angel**
 4 **Valley for the entire event of six days.**
 5 **Q.** Did his participants sleep at Angel
 6 Valley?
 7 **A. From 2004 they did. Not in 2003.**
 8 **Q.** Do you know what the event was called by
 9 James Ray?
 10 **A. Spiritual Warrior Retreat.**
 11 **Q.** And are you familiar with the -- how long
 12 the Spiritual Warrior Retreat was?
 13 **A. Six days.**
 14 **Q.** Are you familiar with what different
 15 events occurred during those six days?
 16 **A. We receive an itinerary. We were not**
 17 **familiar with what happened inside the spaces when**
 18 **he would have his parts of the program. We were**
 19 **familiar with the preparation of the sweat lodge,**
 20 **which he required from us to do. And we were**
 21 **familiar with the proper preparations of the Vision**
 22 **Quest.**
 23 **Q.** Will you tell the Court what the Vision
 24 Quest was.
 25 **A. Vision Quest was taking the people out in**
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1 nature for a certain period. And in this
2 particular case it has always been two nights and
3 one day. People would go out in the night, in the
4 evening, in the dark, spend the night out in the
5 country, spend one day outside, one other night.
6 And the next morning they would be returning.

7 And this required a lot of preparation on
8 our end because regular Vision Quest people go out
9 by themselves and find us. But when you have many
10 people like in his group, it has to be coordinated
11 in a way that everything is safe and manageable.

12 Q. To your knowledge, did James Ray do the
13 Vision Quest all the years that he conducted the
14 Spiritual Warrior seminar at Angel Valley Center?

15 A. Yes, he did.

16 Q. Are you aware whether or not participants
17 in the Vision Quest portion of the seminar received
18 food or water during those two nights and one day?

19 A. They did not receive food. They did not
20 bring food. Did not have food. The first year in
21 2003 the James Ray staff would go out to visit the
22 participants on their sites the next day and
23 brought them water. After that they did not --
24 they discontinued that. And it was my assumption
25 that the participants brought their own water,

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1 which in 2009 I found out they did not.

2 Q. Are you aware from what year forward
3 participants did not receive water during those two
4 nights and one day?

5 A. I'm not fully aware. But I --

6 MR. LI: Your Honor, move to strike after --
7 everything from this.

8 THE COURT: And the grounds, Mr. LI?

9 MR. LI: Lack of foundation. "I'm not fully
10 aware".

11 THE COURT: Again, Rule 104 -- but I would
12 like to know some background if there is some on
13 this. Sustained.

14 Q. BY MS. POLK: Mrs. Hamilton, at some
15 point did you become aware that participants in the
16 Vision Quest portion of the seminar did not have
17 any water during the two nights and one day that
18 they were out?

19 A. I was aware. I became aware of that in
20 2009.

21 Q. How did you become aware of that?

22 A. Because one of the participants was very
23 upset. And I attempted to calm her down and
24 suggested she would take some water. And she said
25 she didn't have water with me. I was in shock

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1 because I had assumed always that there was water
2 with them.

3 Q. Are you familiar with the order of events
4 between the Vision Quest and the sweat lodge
5 ceremony of the Spiritual Warrior seminar?

6 A. I am. That changed a little bit over the
7 years. In 2003 and 2004 they would first do the
8 sweat lodge in the evening. And then after the
9 sweat lodge ceremony they would go out on the
10 Vision Quest. And every person that was involved
11 in the preparation of the Vision Quest, which was
12 mainly first and foremost myself, we would be part
13 of helping the people to bring them to the sites.

14 In 2005 the sweat lodge was -- the order
15 was reversed. The Vision Quest was first. And
16 then when they would come back in the morning, they
17 would have the sweat lodge in the evening of that
18 day. And in 2006 and seven and eight and nine,
19 they would do the sweat lodge, also the same
20 duration of the sweat lodge. But then they would
21 come back in the morning for breakfast and they
22 would do the sweat lodge in the afternoon.

23 Q. I believe you might have misspoken. In
24 2006 you said they would do the duration of the
25 sweat lodge. Do you mean the duration of the

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1 Vision Quest?

2 A. Yes. Yes.

3 Q. Let's talk about 2006 again --

4 A. The duration of the Vision Quest was
5 every year the same. And in 2006 they had the
6 Vision Quest one night, one day, one night,
7 returned in the morning, Vision Quest. And then in
8 the afternoon of 2006, seven, eight and nine, they
9 would do the sweat lodge.

10 Q. Let's talk about the sweat lodge. Was
11 there a sweat lodge, the physical sweat lodge, on
12 the property at Angel Valley Center?

13 A. In 2003?

14 Q. Yes.

15 A. There was. There was a sweat lodge that
16 was built to accommodate about 15 people, 12 to 15
17 people, at the most. That was not big enough.
18 That year James Ray came -- wanted to come the very
19 first time with 39 participants. So that was not
20 big enough.

21 So we had another -- an additional
22 structure built specially for James Ray so that he
23 could accommodate 40 people.

24 Q. Was it built for the 2003 sweat lodge
25 ceremony?

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1 **A. It was built for -- especially for 2003**
2 **sweat lodge ceremony.**

3 **Q.** Do you recall the sweat lodge ceremony
4 that James Ray conducted in 2003?

5 **A. I do.**

6 **Q.** Do you know approximately how many
7 participants he had in the sweat lodge?

8 **A. Yeah. 40.**

9 **Q.** And are you aware of any problems that
10 occurred during that ceremony?

11 **A. No.**

12 **Q.** Did you have a conversation with James
13 Ray after the 2003 sweat lodge ceremony about the
14 heat?

15 **A. We did. He said it was not -- he**
16 **couldn't get it hot enough. So he wanted us to**
17 **take some measures that it would get hot enough.**

18 **Q.** And did you?

19 **A. The next year we made more covering.**
20 **That was the only thing we changed between 2003 and**
21 **2004.**

22 **Q.** And describe for the Court what type of
23 covering you're talking about.

24 **A. The covering for the sweat lodge**
25 **consisted of blankets -- cotton blankets, wool**

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1 **blankets, sleeping bags, moving blankets. And then**
2 **we had -- in 2003 and 2004 we had a canvas topping**
3 **over that. In 2004 James complained that it was**
4 **still not hot enough. We may --**

5 **Q.** Let me stop you there. In 2004 there is
6 another sweat lodge ceremony conducted by James
7 Ray?

8 **A. Yes.**

9 **Q.** And approximately how many participants?

10 **A. 12.**

11 **Q.** And you are not aware of any problems
12 with the 2004 sweat lodge ceremony?

13 **A. No.**

14 **Q.** Do you have a conversation with James Ray
15 after that ceremony?

16 **A. Yes. It was still not hot enough. And I**
17 **alluded that -- to the fact that it was a sweat**
18 **lodge that was the same sweat lodge built for 40**
19 **people, and he was in there with only 12, which**
20 **influences the temperature.**

21 **Q.** Yes. Did you do something in response to
22 James Ray's complaints in 2004 that the sweat lodge
23 could not get hot enough?

24 **A. We did.**

25 **Q.** And what was that?

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1 **A. We increased the covering. We made the**
2 **covering thicker, plus we acquired a vinyl tarp**
3 **that we then used as a final topping.**

4 **Q.** In 2005 did James Ray conduct a sweat
5 lodge ceremony?

6 **A. He did.**

7 **Q.** And you've already testified that 2005
8 was the year that the Vision Quest in relationship
9 to the sweat lodge ceremony changed?

10 **A. Yes. They did the Vision Quest before**
11 **the sweat lodge ceremony.**

12 **Q.** To your knowledge, in 2005 the
13 participants at the Vision Quest did receive water
14 during the 72 hours that they were out?

15 **A. Not to my knowledge.**

16 **Q.** They did not in 2005?

17 **A. I assumed, and I do not know.**

18 **Q.** What time of day, then, was the sweat
19 lodge ceremony in 2005?

20 **A. In the evening, in the dark.**

21 **Q.** Where were you when the sweat lodge
22 ceremony began?

23 **A. When the sweat lodge ceremony began, I**
24 **was in my office.**

25 **Q.** Approximately how many participants were
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1 in the 2005 sweat lodge with James Ray?

2 **A. I have a little note here with the**
3 **numbers. Can I just double check?**

4 **Q.** Yes.

5 **A. There were 52.**

6 **Q.** At some point did you become aware of
7 problems at the sweat lodge ceremony conducted by
8 James Ray in 2005?

9 **A. If I can add to that, the reason why I**
10 **was around towards the end of the sweat lodge**
11 **ceremony was that we supplied fruit and drinks, and**
12 **our kitchen staff had gone home. And I decided to**
13 **take the fruit down towards the end of the**
14 **ceremony.**

15 **Until then I was not aware of any**
16 **problem. When they came out, I was aware that the**
17 **people were not in good shape.**

18 **Q.** About what time was it that you took
19 fruit down to the sweat lodge?

20 **A. It must be between 10:00 and 11:00.**

21 **Q.** P.m.?

22 **A. P.m.**

23 **Q.** Was there lighting down there?

24 **A. Not much. No. Only the lighting of the**
25 **fire, which, towards the end of the sweat lodge,**

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1 has died down. So it was flash lights.

2 Q. When you got down there, was the sweat
3 lodge ceremony still going on?

4 A. Yes.

5 Q. And how long were you there before you
6 became aware that there were some problems?

7 A. When the people came out -- I was there
8 probably about half an hour or so.

9 Q. Before the people came out?

10 A. Before people came out. Because I had
11 wanted to make sure I had everything arranged
12 before they would come out. When they came out, it
13 was pretty chaotic. And then I spotted that one
14 man that was not in good shape.

15 Q. Describe to The Court what you mean when
16 you say it was pretty chaotic.

17 A. People came out not in an organized way,
18 not in a way -- people came out stumbling, falling,
19 not -- not in physical good shape. Not, like,
20 coming out -- because the door was very much a
21 small -- like, coming out and walking away. It was
22 they came out stumbling and needed to lie down
23 right away, sit down on the chairs that we had and
24 needed assistance to sit down.

25 Q. Was somebody helping them?
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1 A. There were only -- at that event there
2 were only three staff members, who all were also
3 inside the sweat lodge. So I guess they did the
4 best they could to help. But it was dark also. I
5 did not know who was helping who.

6 Q. Do you know the names of the three staff
7 members?

8 A. The main person was Tere Ginerella. The
9 other person was Megan Fredrickson and her husband,
10 Josh Fredrickson.

11 Q. What did you do, if anything, in response
12 to what you've described as chaos?

13 A. I helped people, brought them drinks.
14 Those who did not walk over to where the drinks
15 were, I would bring them drinks. I would -- people
16 who were uncomfortable, I would suggest they would
17 control their breathing. People who were shivering
18 and cold, I started tearing blankets off the sweat
19 lodge because I knew how it had been put together.
20 Pulled blankets from under the tarp and wrapped
21 people in blankets, walked over to the next people
22 until there was this one person that was really out
23 of control.

24 Q. How did you become aware of one person
25 out of control?

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1 A. He was gesturing wildly. He was calling,
2 making noise. And people were around him,
3 concerned and say what's going on with him. So
4 it's -- yeah.

5 Q. Do you know the name of the person you
6 were referring to?

7 A. Daniel Pfankuch.

8 Q. Describe for the Court -- what did you do
9 when you became aware of him?

10 A. First I observed. My observation was
11 that I recognized that is one of the symptoms, what
12 happens when a person is in an altered state, where
13 a person is not necessarily unconscious but not
14 conscious of his environment.

15 My understanding is that this was a
16 typical example of a person that was not fully back
17 into his body. He was not unconscious because he
18 was moving. But he did not hear what we were
19 saying. He didn't hear what anybody was saying.
20 He did not respond to anybody. If people said lie
21 down, he would not. And eventually we did have him
22 lay down.

23 I recognized this condition, but I also
24 recognized this is not something that I know how to
25 handle. I looked around for James Ray hoping that
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1 he will be able to handle it. James was not there,
2 and there was nobody else. All the other people
3 didn't even know what was going on.

4 Q. What happened next?

5 A. I got in my golf cart because I thought
6 the only one and help that I can get is calling
7 911. But I did not want to do that without letting
8 James Ray know that I was taking that action.
9 James, I had understood by then, that he had left
10 the site to go to his room to take shower. And
11 sure, I found him in his room. And I knocked on
12 his door. And he yelled at me, said I'm in the
13 shower.

14 And I said I'm going to call 911. And he
15 says -- well, he didn't like that. I said I'll do
16 it anyway. So I took the phone there right in the
17 building where he was, called 911 and returned to
18 the site. At that moment --

19 Q. Let me stop you there. You said James
20 Ray didn't like that. What did he say to you that
21 he --

22 A. He didn't want me to call 911. We can do
23 it ourselves.

24 Q. Did he tell you not to call 911?

25 A. He told me not to call 911. I said I'll
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1 do it anyway.

2 Q. Did he know that you -- how did he know
3 what the situation was that you were concerned
4 about?

5 A. I did not think that he knew what the
6 situation was because he had walked away before he
7 could see what was going on.

8 Q. And did you tell him anything?

9 A. I was hoping that by telling what I did
10 that he would understand something serious was
11 happening.

12 Q. Do you recall what you told him?

13 A. Not exactly.

14 Q. Did you tell him that something serious
15 was going on?

16 A. Yes.

17 Q. And then what happened?

18 A. So I went back to the area. And by that
19 time Daniel was laying down. His wife was with
20 him.

21 Q. And I'm sorry to interrupt you. Did you
22 call 911?

23 A. I did. In the building where James was.
24 And then took my golf cart, drove back to the site,
25 which is just a minute, and found Daniel laying

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1 down on the ground with people around him, but
2 first and foremost his wife. And his wife was
3 telling him how much she loved him and how his
4 children loved him and how his children needed him.
5 And I remember very clearly that I encouraged her
6 to keep doing that because that I knew is one of
7 the ways to get a person back into their situation.
8 If you appeal to them via the things they love,
9 that are dearest to them.

10 Q. Did you observe whether Daniel was
11 conscious?

12 A. At that moment he was calm but still not
13 responding.

14 Q. What do you mean by "not responding"?

15 A. He did not respond to anything anybody
16 said or did. But he was calm.

17 Q. Did he appear to be awake?

18 A. If awake means that a person is moving
19 somewhat, yes. But if awake means a person is in
20 communication with whatever is going on around
21 them, no. He was not.

22 Q. What happened next?

23 A. What happened next was that James walked
24 back, either walked or drove golf cart. I don't
25 remember. Came back to the site, saw me and

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1 started yelling at me.

2 Q. What did James Ray say to you?

3 A. I do not know the exact words. I do
4 remember how I felt. I do remember how the people
5 around him responded. Everybody was in shock. The
6 people around him looked at him, had never
7 experienced James falling out like that.

8 I -- the gist of what he said, he told me
9 that he didn't want me to be there with his people.

10 And I said okay. So I got up, got in my golf cart,
11 went to the gate because I knew that the ambulance
12 would be coming soon. And then when I was at the
13 gate. I could drive them directly to where things
14 were going on.

15 Q. About how far is that gate up that
16 two-mile road up to 89A?

17 A. Two miles.

18 Q. But the gate to enter your property is
19 what?

20 A. We're at the end of the road.

21 Q. Is it a gate that is locked?

22 A. Normally is closed. Yes.

23 Q. In other words, for someone to enter the
24 property, the gate has to be opened by somebody?

25 A. Yes. So I opened it, and I could then

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1 drive in front of them so that they do not have to
2 search, to look for where do we have to go with the
3 ambulance.

4 Q. Did you, in fact, meet the ambulance at
5 the gate?

6 A. Yes.

7 Q. How long would you say you it took the
8 ambulance to get there from the time you called?

9 A. I would say 15 minutes. They were there
10 very fast.

11 Q. And then what happened once the ambulance
12 got there?

13 A. Once the ambulance got there, they
14 treated Daniel and -- to the best of their ability.

15 And he was still not present. They carried him
16 into the -- inside the ambulance and continued and
17 hooked him up on things. I do not know the medical
18 details of that.

19 And by then Daniel came to. And he said
20 I don't have to go to the hospital. And they said
21 we better. And I agreed, totally agreed. And his
22 wife agreed too. It's better to check him out. So
23 they went to the hospital. And they had him --
24 dehydrated --

25 MR. LI: Objection. Move to strike all the

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1 stuff that happens at the hospital. Lack of
2 foundation.

3 THE COURT: I don't think there is any
4 personal knowledge of that. I'm not going to
5 consider that. But, again, in this context. I'm
6 not going to assess that weight.

7 Please continue, Ms. Polk.

8 Q. BY MS. POLK: Mrs. Hamilton, after Daniel
9 Pfankuch was taken away in the ambulance, what did
10 you do?

11 A. After that whoever needed any other care,
12 I did. And then everybody went to the rooms and
13 took care of themselves.

14 Q. Were there additional people at the site
15 who still seemed to need care?

16 A. Not that I remember. Other than -- not
17 other than sitting there for a little while and
18 having drinks and being wrapped up. But by that
19 time the people started to go to their rooms.

20 Q. Did you go to the hospital where Daniel
21 Pfankuch had been taken?

22 A. Not that night. The next morning he came
23 back, and he was very cheerful and very -- yeah.
24 He felt well, he said, and he was -- well, actually
25 he was talking that he had a great experience

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1 because that when he was out there, the situation
2 that we were so concerned about, he said he had a
3 great time.

4 Q. And, Mrs. Hamilton, did you have any
5 further conversations with James Ray about what had
6 happened to Daniel Pfankuch?

7 A. Yes, I did.

8 Q. When did those conversations take place?

9 A. The next morning. Because this was at
10 the end of the retreat. So the next morning they
11 would be leaving. Yes. I talked with James.

12 Q. And what was that conversation about?

13 A. I was very upset with him. I told him
14 that what happened was absolutely totally
15 unacceptable. I never wanted him to ever have a
16 situation that that would occur again that I would
17 have to call 911. And I also I was upset about him
18 yelling at me.

19 He apologized to me for both. He
20 apologized specifically for yelling at me, and he
21 apologized for this having occurred.

22 Q. What did he say about the event that had
23 occurred, if anything?

24 A. The only thing he said was that he
25 apologized and that he would take his measures that

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1 it would not happen again. And I trusted that that
2 was what was going to happen. I would see him next
3 year.

4 Q. You continued to contract with James Ray?

5 A. We have already set things in motion.
6 And when something unfortunate or something
7 undesired happens, I think it's just common sense
8 to expect the person learns from the situation and
9 adjusts their ways of doing things.

10 Q. Yes. The order of events between the
11 Vision Quest and the sweat lodge -- did that change
12 after the 2005 incident with Daniel Pfankuch?

13 A. What changed was that James Ray made the
14 schedule such that the sweat lodge was in the
15 afternoon rather than in the evening.

16 Q. And how close in time to the Vision
17 Quest?

18 A. The people would come back from the
19 Vision Quest in the morning before breakfast. And
20 then the time between the Vision Quest and the
21 sweat lodge was shorter when he did the sweat lodge
22 in the afternoon rather than in the evening. The
23 advantage was that it was daylight.

24 Q. Prior years there was more time between
25 the Vision Quest and the sweat lodge?

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1 A. In the one year that that was the order,
2 that Vision Quest was before the sweat lodge, in
3 that year the time between the sweat lodge was
4 between -- between the Vision Quest and the sweat
5 lodge was that they came back -- would return
6 after -- before breakfast. And the sweat lodge
7 ceremony would be in the evening starting at 8:00
8 or so. And in 2006 it was the first time that the
9 sweat lodge was starting at about 3:00.

10 Q. Let me back up little bit. Are you able
11 to remember what month the 2003 Spiritual Warrior
12 seminar occurred?

13 A. 2003 it was in November.

14 Q. And for 2004?

15 A. There was one year in August. And I
16 don't remember exactly which year that was. Most
17 of them were in September. The last one -- two
18 were in October. Last year was in October.
19 Another one was in October. And then one year it
20 was in the end of August.

21 Q. Do you know what month the seminar was
22 held in 2005?

23 A. I would have to check on that.

24 Q. Okay. With regard to the 2006 Spiritual
25 Warrior seminar and specifically the sweat lodge

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1 ceremony conducted by James Ray, and you have any
2 discussions ahead of time about what would occur?

3 **A. They wanted more fruits and drinks than**
4 **we had in 2005. There were things in 2005, but**
5 **they wanted a little more. Okay. That's what we**
6 **did. And James would have one or two people of his**
7 **staff, of his team, outside of the sweat lodge.**
8 **And in 2005 everybody was inside.**

9 **Q. And you told us earlier that the sweat**
10 **lodge was built to hold 40 people?**

11 **A. The one built in 2003 would hold 40**
12 **people. And that one was also used in 2004.**

13 **Q. What was used in 2005?**

14 **A. In 2005 we had a new one that**
15 **accommodated 50, around 50 people. And a new one**
16 **was built in 2006 also accommodating 50 people.**
17 **And then in 2007 James announced that his group**
18 **would be larger -- sorry. Not James. His staff**
19 **announced that the group would be larger, so could**
20 **we have a sweat lodge built for 75 people.**

21 **Q. Let me just back up a little bit. For**
22 **2006 the sweat lodge was designed to hold?**

23 **A. 50.**

24 **Q. And how many people, in fact, were in**
25 **that ceremony?**

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1 **A. 42 or 43.**

2 **Q. Did you have any discussions with James**
3 **Ray for the 2006 sweat lodge ceremony pertaining to**
4 **dividing up into two groups?**

5 **A. Yes. When I say "I," the part of that**
6 **communication went through my husband, Michael. He**
7 **would normally do all the details of the contract**
8 **interaction until the contract was complete, and**
9 **then our staff would take it further. The**
10 **discussion around the site of the sweat lodge --**

11 **MR. LI: Your Honor, move to strike anything**
12 **that's not from the witness' personal knowledge.**

13 **THE COURT: I'm going to note when it's not.**

14 **You may continue, Ms. Polk.**

15 **Q. BY MS. POLK: You can continue. Thank**
16 **you.**

17 **A. As a co-owner and as a co-responsible**
18 **person, I was an integral part of also making the**
19 **arrangements, especially after what happened in**
20 **2005 and after the discussion that we had about**
21 **changes have to be made.**

22 **When the size of the sweat lodge was**
23 **discussed in 2007, both my husband and I were**
24 **adamant about please -- and we had to communicate**
25 **through his staff -- please split the group in two.**

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1 **Do two ceremonies so that you do not have to go**
2 **larger, that there will be two ceremonies for,**
3 **let's say, 30 or 40 max, which is already a large**
4 **group.**

5 **James Ray -- we heard through his staff**
6 **that James was in no way willing to do that. He**
7 **wanted to do it himself. He wanted to have the**
8 **group all together. Our suggestion, if he cannot**
9 **do -- physically do two ceremonies back to back by**
10 **himself, to bring somebody else in who would do the**
11 **other group.**

12 **That was totally unacceptable. We were**
13 **even willing to build another lodge so it could**
14 **happen simultaneously. There was no way that James**
15 **was willing to discuss any of that. He wanted to**
16 **do it in one group, and he wanted to have a lodge**
17 **for 75 people. Could we do that.**

18 **Q. Did this discussion that you just**
19 **testified about occur prior to the 2006 --**

20 **A. 2007.**

21 **Q. Prior to the 2007 sweat lodge?**

22 **A. Yes.**

23 **Q. Let me back up you up for a moment, then.**

24 **In 2006 were there any -- immediately following the**
25 **2005 problems, were there any problems that you**

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1 **noticed in 2006?**

2 **A. No. I was very adamant and I was**
3 **there --**

4 **MR. LI: Move to strike. I've not objected to**
5 **the constant narrative. But I'd rather ask if the**
6 **witness could simply answer the questions.**

7 **THE COURT: There was a response to the**
8 **question.**

9 **Ms. Polk, please ask another question.**

10 **Q. BY MS. POLK: Did you have any concerns**
11 **or observations about 2006?**

12 **A. In 2006 I was -- after what happened in**
13 **2005, I was very adamant to be around there all the**
14 **time during the ceremony, from the beginning to the**
15 **end. And there was no reason for me to think that**
16 **he would not have taken what happened in 2005 into**
17 **some consideration so the situation was acceptable.**

18 **Q. Why is it, then, that for 2007 you had**
19 **conversations with James Ray and his staff about**
20 **dividing up into two groups?**

21 **A. Because if -- one of the reasons that I**
22 **saw that accidents can happen is if the group is**
23 **too large. And the group -- a group of 40 or 50 is**
24 **already very large. If you even increase that --**
25 **for me that was not a number of participants that**

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1 would increase the safety. On the contrary.

2 Q. Did you become aware, then, that for 2007
3 James Ray wanted to -- that he actually had more
4 people enrolled in his seminar than in past years?

5 A. He did. Because in 2007 they were with
6 71 people, of which probably four were not inside
7 the lodge. But I do not know exactly that number.
8 But the total of people who were there including
9 James Ray himself was 71 people.

10 Q. How did you resolve, then, the concern
11 you had with the group being too large and the
12 discussion you had with James Ray about splitting
13 up into two groups and conducting two ceremonies?

14 A. We found somebody who was willing and
15 able to build a sweat lodge that could host 75
16 people.

17 Q. Who was that, if you recall?

18 A. In 2007? I do not recall exactly his
19 name. He was Native American man from Prescott. I
20 could find his name.

21 Q. So, in fact, you had a new sweat lodge
22 built for 2007?

23 A. Yes.

24 Q. Were you on the property or involved in
25 the sweat lodge ceremony that was held in 2007?

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1 A. In 2007 I went by -- I came by towards
2 the end of the sweat lodge and saw it was in pretty
3 good order. And besides, by then we had a general
4 manager, and he was mostly present. He was present
5 during the entire ceremony. So I also left part of
6 his observations to him.

7 Q. Who is that general manager?

8 A. That general manager is Gary Palisch.

9 Q. In 2008 were you involved at all or on
10 the property for the sweat lodge ceremony conducted
11 by James Ray?

12 A. I was not involved in the sweat lodge
13 ceremony because by then our general manager was
14 fully in charge, and my husband and I were more in
15 the background.

16 Q. Was a different lodge constructed from
17 2007 to 2008?

18 A. Yes.

19 Q. And why was that?

20 A. Because the structure as was built in
21 2007 -- we were not totally happy with it. It
22 didn't seem so stable. So we decided to have a new
23 one built.

24 Q. Do you recall who built the lodge for
25 2008?

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1 A. That was designed by David Sitting Bear.
2 He has a great reputation of building sweat lodges
3 and has also built larger sweat lodges that could
4 hold even over a hundred people. And his nephew,
5 Brian Hornbeck, was actually doing the work.

6 Q. How many people was the 2000 -- sweat
7 lodge designed to hold?

8 A. Also 75.

9 Q. Do you know Ted and Debby Mercer?

10 A. I do.

11 Q. Are they employees of Angel Valley
12 Center?

13 A. They are not.

14 Q. Did you contract with the Mercers?

15 A. Last year in 2009 we did.

16 Q. And they were on the property in 2007 and
17 2008?

18 A. 2007 they were just assisting as
19 volunteers. In 2008 they were on staff. And in
20 2009 they were no longer on staff, but we hired
21 them to -- we contracted them.

22 Q. The sweat lodge that held the ceremony
23 performed in 2009 -- was that a new sweat lodge?

24 A. The structure?

25 Q. Yes.

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1 A. No. That was the same that we used in
2 2008.

3 Q. Will you describe just generally for the
4 Court what the sweat lodge is made of.

5 A. The structure you mean?

6 Q. Yes.

7 A. The structure of the sweat lodge is made
8 of willow branches. They have to be young and they
9 have to be flexible. Otherwise they cannot bent in
10 the shape that they need to be done. The sweat
11 lodges that we have had at Angel Valley were always
12 built in the tradition of the Native Americans by
13 people who were Native American or closely related.

14 The way they are tied together is with
15 ropes. There is a certain traditional way of tying
16 the ropes. Everything goes with prayers so that
17 the whole building of the sweat lodge is in itself
18 a ceremony, a sacred ceremony, by itself.

19 Then when the structure is up, before
20 each ceremony covering is brought up on that, as
21 you asked about before.

22 Q. And, Miss Hamilton, I'm going to show you
23 some photographs taken by the Mercers in 2008 and
24 ask you if you recognize these photographs.

25 MR. LI: Could we see them first, Your Honor.

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1 THE COURT: You will see them before I do, if
 2 I do see them.
 3 Q. BY MS. POLK: Do you recognize those
 4 photographs I just showed you, Miss Hamilton?
 5 A. Yes, I do.
 6 Q. What are they of?
 7 A. They are of -- when the structure of the
 8 sweat lodge as we used in 2008 and 2009, when that
 9 was erected and the Mercers were part of the
 10 erection.
 11 Q. Do they illustrate what you just
 12 described to the Court about the willow branches?
 13 A. Yeah.
 14 MS. POLK: Your Honor, I move for the
 15 admission of Exhibit 16, 17 and 18.
 16 MR. LI: No objection, Your Honor.
 17 THE COURT: Those exhibits are admitted for
 18 this hearing.
 19 (Exhibits 16, 17 and 18 admitted.)
 20 MS. POLK: Your Honor, may I publish them?
 21 THE COURT: You may.
 22 Q. BY MS. POLK: Mrs. Hamilton, I put on up
 23 on the screen Exhibit 16. Can you tell the Court
 24 what that illustrates.
 25 A. Illustrates that in the foreground you
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1 see the branches as they have been collected. And
 2 then because they are freshly cut, they are able to
 3 bend them over in the shape that they want. And
 4 then they are tied together with the ropes in the
 5 traditional way.
 6 Q. Who are the three people that are shown
 7 in that photograph, if you know?
 8 A. The only -- it's Brian Hornbeck. And I
 9 do not -- I know. The person in the middle -- that
 10 is a volunteer that was at the Angel Valley at the
 11 time from Germany. And I think the person on the
 12 side is Ted Mercer.
 13 Q. And I'm going to put up on the screen
 14 Exhibit 17.
 15 A. That photo is taken almost at the same
 16 time when they were having only the round bars that
 17 go up.
 18 Q. And I'm going to put up on the screen
 19 Exhibit 18. What does that show us?
 20 A. That looks like the whole structure as
 21 completed when first the round bars that went up.
 22 And then they put another branches, little
 23 branches, around so that that holds the structure.
 24 As you may also see because of the size of the
 25 structure that in the middle there are some
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1 additional support structure that are usually not
 2 used for smaller sweat lodges.
 3 Q. And what happens after this frame is
 4 built?
 5 A. In the foreground you see the door. The
 6 opening where you see larger, that is the door
 7 facing east. That is where the people get in and
 8 out.
 9 Q. And I believe you can actually -- with
 10 your hand you can draw on it to show where the door
 11 is. I can show you. Press here first.
 12 A. That's where the door is.
 13 Q. Is this structure then covered with
 14 something?
 15 A. And then this structure is covered with
 16 all the blankets. For us it was very important to
 17 have as much as possible natural fabrics coming
 18 over. So there is a thick layer of fabrics. And
 19 we needed -- for this size of structure we needed a
 20 lot of blankets to cover this.
 21 MR. LI: I'd like to object to this line of
 22 questioning only as a time-saving issue. I'm not
 23 sure what the relevance of this is. We understand
 24 there is a sweat lodge. It was built. There are
 25 many pictures that indicate what the sweat lodge
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1 looks like and how it was built.
 2 THE COURT: Ms. Polk, what is the relevance of
 3 this line?
 4 MS. POLK: Your Honor, I think my next
 5 question will show the relevance.
 6 THE COURT: Okay. Go ahead.
 7 Q. BY MS. POLK: The materials that were
 8 used to cover the sweat lodge -- where did they
 9 come from?
 10 A. We had collected them over the years
 11 to -- and make sure we had enough covering to keep
 12 the heat in and to have enough thick covering that
 13 if we covered it with a tarp that there was a thick
 14 layer of blankets.
 15 Q. Did you use the same materials that were
 16 used in 2009 to cover the sweat lodge? Did you use
 17 those same materials in previous years?
 18 A. Yes. We have the materials that were
 19 used in 2009 were used in 2005 six, seven and eight
 20 and were used during sweat lodge ceremonies with
 21 James Ray and also other groups.
 22 Q. Where did you keep the materials when
 23 they were not in use?
 24 A. We have a -- one of our well houses is
 25 log building surrounded one of the wells, this
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1 **newly made structure with a concrete floor. And**
2 **that's where we kept the blankets.**

3 Q. Do you know where the logs came from that
4 were used in the sweat lodge ceremony in -- this is
5 2008. Did you use the same logs between 2008 and
6 2009?

7 A. **For the fire, you mean?**

8 Q. No. I'm sorry. For the structure
9 itself, the willow branches.

10 A. **Oh. The willow branches. They were**
11 **collected around the creek around the property.**

12 Q. They're cut on site?

13 A. **Yes.**

14 Q. Both years, 2008?

15 A. **Yes.**

16 Q. And logs that are burned in a fire to
17 heat rocks; is that correct?

18 A. **Yes.**

19 Q. Where did those logs come from that are
20 used to heat the rocks?

21 A. **Every year it was dead wood that we would**
22 **find on the property. In 2009 in addition we also**
23 **used leftovers of cedar logs that we had used for**
24 **building our cabins.**

25 Q. And I jumped ahead a little bit in
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1 talking about how stones or rocks are heated in the
2 fire. Explain to the Court how that works.

3 A. **In the fire pit is the rocks that will be**
4 **used. And during the ceremony that are brought**
5 **into the lodge are heated up in a fire outside of**
6 **the sweat lodge. There was a specific type of**
7 **volcanic rock that worked very well for that**
8 **purpose. And our location is along Oak Creek, and**
9 **we have rocks all over the place. So we would**
10 **collect rocks along the creek.**

11 Q. You made mention of the fact that other
12 people have performed sweat lodge ceremonies at the
13 Angel Valley Center; is that correct?

14 A. **Yes.**

15 Q. When you say "other people," do you mean
16 other groups?

17 A. **Other groups.**

18 Q. Does Angel Valley Center host other
19 retreats?

20 A. **We host other retreats. And some of the**
21 **retreats it would usually be three or four in a**
22 **year that would ask to have a sweat lodge. We**
23 **would provide the space and the material, and we**
24 **would usually also -- for most of the groups we**
25 **would also provide a Native American facilitator to**

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1 **do the ceremony.**

2 Q. About how many other ceremonies were
3 performed in the sweat lodge of 2008, which is the
4 one up here on the screen?

5 A. **Five.**

6 Q. And about how many other ceremonies had
7 been performed in the sweat lodge used in 2009?

8 A. **This one was built in 2005. And in**
9 **2008 -- and was used in 2009. And that particular**
10 **structure there have been five.**

11 Q. Okay. With regard to other sweat lodge
12 ceremonies performed at Angel Valley Center for
13 other groups, did I hear you just say that you
14 provided the facilitator for the ceremony?

15 A. **Yes.**

16 Q. For the all the other events? For the
17 all the other sweat lodges?

18 A. **Yes. It would be the request of the**
19 **group. Sometimes the group would have somebody in**
20 **mind, and they asked us to arrange that. Sometimes**
21 **they would ask do you know a Native American person**
22 **who can do that. For two of these ceremonies the**
23 **person who actually made this structure, he**
24 **performed the ceremony with a group, one with group**
25 **of 50 and another with group of 20.**

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1 Q. Are you aware of any problems that ever
2 occurred in sweat lodge ceremonies performed by any
3 group other than James Ray?

4 A. **Never ever. Not even close.**

5 Q. And does that go all the way back to 2003
6 and the previous sweat lodge structures that we've
7 talked about?

8 A. **Absolutely.**

9 Q. James Ray is the only one who has ever
10 had problems with his sweat lodge ceremonies?

11 A. **Yes.**

12 Q. Did James Ray ever ask you to find or
13 provide a facilitator for the sweat lodge
14 ceremonies for him?

15 A. **No.**

16 Q. Did he personally perform every sweat
17 lodge ceremony from 2003 through 2009?

18 A. **Yes, he did.**

19 Q. Are you familiar with what the role of
20 the person who conducts the sweat lodge ceremony
21 is?

22 A. **From my perspective --**

23 MR. LI: Objection, Your Honor. This asks for
24 a yes or no.

25 THE COURT: That's true.

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1 Q. BY MS. POLK: Are you familiar with the
2 role of the facilitator?

3 A. Yes, I am.

4 Q. And tell The Court what that role is.

5 A. That role is that the person who
6 facilitates is first and foremost responsible for
7 the condition of the people as they are in the
8 lodge. They are supposed to know how everybody is
9 doing. And if it's not clear how everybody is
10 doing, to check on them and take measures.

11 MR. LI: Your Honor, move to strike. This is
12 improper opinion evidence, expert evidence too and
13 unqualified.

14 THE COURT: Ms. Polk?

15 MS. POLK: You want me to respond to the
16 objection?

17 THE COURT: Yes, if you would.

18 MS. POLK: Your Honor, I can establish a
19 little bit more foundation for Mrs. Hamilton. This
20 is not expert testimony, simply the testimony of
21 the person who owns and manages the center where
22 the sweat lodge ceremonies have been performed over
23 the years. I can establish foundation that she
24 herself is familiar with sweat lodge ceremonies,
25 and I can ask her a few questions in that regard if

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1 the Court would like.

2 MR. LI: Your Honor, if all Ms. Polk wants to
3 elicit from this witness is what she expects on her
4 land, I have no objection. If it's some broader
5 testimony about how sweat lodges are operated
6 throughout the world, then I would object.

7 THE COURT: Ms. Polk, yes. If you're offering
8 it just for her expectations, if that's the limits
9 of this, that's fine.

10 MS. POLK: That's fine, Your Honor.

11 Q. Mrs. Hamilton, have you been in sweat
12 lodge ceremonies yourself?

13 A. I have.

14 Q. And about how many?

15 A. About 10.

16 Q. Have you been --

17 MR. LI: Your Honor, I'm sorry. Just to speed
18 things up, I don't need the foundation if that's
19 all she's going to testify about. So I'll withdraw
20 my objection.

21 THE COURT: Okay.

22 Ms. Polk, continue.

23 Q. BY MS. POLK: What is the role of the
24 person conducting the sweat lodge ceremony inside
25 the sweat lodge?

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1 A. First and foremost be responsible for the
2 people who are in there. Second, to determine how
3 many rounds of sweat lodge ceremony is going to be
4 and how many stones in each round will be brought
5 in; how long the door will be open between the
6 rounds; whether a facilitator allows people to
7 leave the sweat lodge, yes or no; to allow people
8 whether they can bring water inside the sweat
9 lodge, yes or no; to feel when it is time to do
10 something, yes or no.

11 That's what I see as the role of the
12 facilitator.

13 Q. Is there a title given to the person
14 other than facilitator who is conducting the
15 ceremony?

16 A. I prefer to stick to the term
17 facilitator.

18 Q. Does the facilitator -- you mention the
19 facilitator calls for the number of stones.

20 A. Yes.

21 Q. Explain a little bit for the Court what
22 you're referring to.

23 A. In traditional Native American sweat
24 lodges, usually there are four rounds, and each
25 round there are four, five or six stones are

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1 brought in. Total of 20 stones are usually brought
2 in.
3 James Ray chose to do seven rounds, and
4 in each round he would have 7 or 8 or 9 or 10
5 stones brought in.

6 Q. And these are the stones that we referred
7 to that are getting heated up inside the fire pit?

8 A. Yes.

9 Q. What happens to the stones once they're
10 brought inside the sweat lodge?

11 A. Inside the ceremony -- inside the sweat
12 lodge there is a pit where the stones are in. And
13 then they give off heat. Then usually water is
14 poured over the stones, which gives off steam,
15 which increases the heat. And then oftentimes they
16 sprinkle some herbs on it. Native Americans
17 usually use sage for that.

18 THE COURT: Ms. Polk, if we can take a recess
19 at this point. It's been 90 minutes.

20 Mrs. Hamilton, the rule of exclusion has
21 been invoked in this hearing. That means you can't
22 talk about your testimony or the case with any
23 other witness until the hearing is complete. You
24 can talk to the attorneys. Please watch your step.

25 Let's recess until 11:00. Thank you.

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1 (Recess.)

2 THE COURT: The record will show the presence
3 of defendant, counsel. And Mrs. Hamilton is on the
4 stand.

5 MS. POLK: One matter before I continue,
6 Mr. Hamilton.

7 Michael Hamilton is the spouse of Amayra
8 Hamilton. He will not be a witness at the 404(b)
9 hearing. He will likely be a witness at trial. He
10 would like to be in the courtroom for the remainder
11 of this testimony.

12 THE COURT: Mr. Li?

13 MR. LI: We ask that he be excluded. He will
14 be a witness at trial and his wife is currently
15 testifying. I think the better course would be for
16 him to be outside.

17 THE COURT: It's come up before. I don't
18 think there is a clear law. I think it's a
19 discretionary matter. I'm going to have the rule
20 apply for this hearing and not have people known to
21 be witnesses in the future be present as well. I
22 think it's a good idea not to have that.

23 So thank you, sir.

24 MR. LI: Thank you, Your Honor.

25 Q. BY MS. POLK: Miss Hamilton, with respect
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1 to James Ray and his level of supervision of the
2 Spiritual Warrior seminar conducted at the Angel
3 Valley Center, could you describe his level of
4 supervision.

5 **A. James Ray had very specific instructions**
6 **for each and every event that took place at Angel**
7 **Valley. He had very specific instructions to his**
8 **staff to make sure every little detail was checked**
9 **out, discussed beforehand, checked out on site. If**
10 **anything was not according to his desires or his**
11 **wishes, he would let us know via staff, and we**
12 **would act accordingly.**

13 Q. Thank you. Let's talk about the sweat
14 lodge used for the 2009 sweat lodge ceremony
15 conducted by James Ray. Your testimony is that
16 that is the same structure that was used in 2008?

17 **A. Yes, it is.**

18 Q. And is it the same blankets and coverings
19 as well?

20 **A. The same blankets and coverings.**

21 Q. How many participants were involved in
22 the 2009 sweat lodge ceremony conducted by James
23 Ray?

24 **A. Including James Ray there were 55 people**
25 **inside the structure during the ceremony.**

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1 Q. How many were outside?

2 **A. Five.**

3 Q. Do you know how many rounds James Ray
4 held, how many he conducted?

5 **A. Eight.**

6 Q. And do you know how many stones were
7 used?

8 MR. LI: Your Honor, these are yes or no
9 questions. Do you know? How do you know?

10

11 THE WITNESS: Yes, I do.

12 Q. BY MS. POLK: And how many were there?

13 MR. LI: Sorry, Your Honor. The next question
14 would be how do you know. This is hearsay.

15 THE COURT: That's true. There is a lack of
16 foundation. And if it's significant, I can't
17 assess it much weight, give it much weight, if I
18 don't have some foundation.

19 Ms. Polk?

20 Q. BY MS. POLK: How do you know how many
21 stones were used by James Ray in the 2009 sweat
22 lodge ceremony?

23 **A. After the ceremony, after we had access**
24 **to the site, after the detectives cleared the site,**
25 **all the stones were still in the pit that was**

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1 **inside the structure. And there were 55 stones.**

2 Q. Who counted them?

3 **A. We did with a lot of people.**

4 Q. You personally were involved with others?

5 **A. Yes. We kept all the stones on the site**
6 **there. And we have used them to make a memorial**
7 **site. And there are 55.**

8 Q. Thank you. Were you on the property in
9 2009 in October when James Ray conducted the sweat
10 lodge ceremony?

11 **A. I was.**

12 Q. And in 2009 tell the Court the
13 relationship and timing between the Vision Quest
14 and the sweat lodge ceremony.

15 **A. The timing was that the people came back**
16 **from the Vision Quest in the morning before**
17 **breakfast around 7:00, 7:30, would have breakfast;**
18 **and the sweat lodge started in the afternoon around**
19 **3:00. Actually at exactly 3:00 they started to get**
20 **in.**

21 Q. And the participants had been out on the
22 Vision Quest for how many days and how many nights?

23 **A. Two nights and one day.**

24 Q. Were you at the sweat lodge ceremony when
25 it first began?

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1 **A. I was at the site when they entered the**
2 **sweat lodge.**

3 **Q.** Let me show you what's marked as
4 Exhibit 14. Do you recognize this as a photograph
5 that you took?

6 **A. I recognize as a photograph that I took.**

7 **Q.** And what does it show?

8 **A. It shows the people standing in line**
9 **before when they had started to enter the lodge.**

10 THE COURT: Ms. Polk, if you would provide the
11 exhibits to Mr. Li.

12 MR. LI: Your Honor, she did. Thank you very
13 much.

14 THE COURT: What's the number of that?

15 MS. POLK: This is Exhibit 14. Your Honor, I
16 move for the admission of Exhibit 14.

17 THE COURT: Any objection?

18 MR. LI: No, Your Honor.

19 THE COURT: 14 is admitted.

20 (Exhibit 14 admitted.)

21 MS. POLK: And may I publish it?

22 THE COURT: You may.

23 **Q.** BY MS. POLK: Can you use your finger on
24 the screen to point out to the Court what perhaps
25 is obvious, but where the is sweat lodge itself?

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1 **A. Over there.**

2 **Q.** And this photograph was taken before?

3 **A. This photograph was taken when the group**
4 **had started to enter the lodge. And you see the**
5 **person here with the blue shirt. She is standing**
6 **right in front of the opening where a previous**
7 **person had just entered.**

8 **Q.** What were you doing when everybody was
9 entering the sweat lodge?

10 **A. Watching.**

11 **Q.** And taking photographs?

12 **A. And I took a few photographs.**

13 **Q.** What did you do after everybody went
14 inside?

15 **A. I wanted to take some photographs of the**
16 **lodge as it was in progress. So I took a few**
17 **pictures from the other side where the people of**
18 **his volunteer staff, called the "Dream Teamers,"**
19 **where they were standing around the lodge.**

20 **Q.** You just used a term. You used a term,
21 Dream Team. Tell The Court what that refers to.

22 **A. James Ray would bring some people of his**
23 **staff, and he would also bring some people,**
24 **volunteers. And the volunteers were usually people**
25 **who had been participating in other events of his**

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1 **and volunteered to be part of the event to assist**
2 **with the procedures. And James Ray called those**
3 **people, that team, the "Dream Team" .**

4 **Q.** Were Dream Team members inside or outside
5 the sweat lodge?

6 **A. Both. There were some outside. There**
7 **were some inside.**

8 **Q.** Were you familiar with one of the
9 deceased in this case -- Liz Neuman?

10 **A. Yes.**

11 **Q.** Was she a Dream Team member?

12 **A. She was a Dream Team member.**

13 **Q.** After you took photographs, what did you
14 do, Mrs. Hamilton?

15 **A. Then I went to my office.**

16 **Q.** At some point did you come back down to
17 the sweat lodge?

18 **A. I came back down to watch the end of the**
19 **sweat lodge.**

20 **Q.** And why did you come back down?

21 **A. Because I was restless. I had uneasy**
22 **feelings.**

23 **Q.** Do you know what round approximately it
24 was that you came back down to the sweat lodge
25 site?

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1 **A. The sixth round.**

2 **Q.** What did you find when you got there?

3 **A. I found some people sitting outside. And**
4 **they were not very comfortable. I found some**
5 **people of the staff, in particular one person of**
6 **our staff and the coordinator of James Ray. They**
7 **were very upset about what they heard, what they**
8 **observed.**

9 **So I talked with them. And I said in**
10 **particular to the one person of our staff, if it is**
11 **true what you are feeling, what you're hearing, we**
12 **need to be present, because then these people need**
13 **assistance the moment they come out.**

14 **Q.** Who is that staff member you're referring
15 to?

16 **A. Fawn Foster.**

17 **Q.** What happened next?

18 **A. I waited around and until they started to**
19 **come out. And then I saw what they were fearing,**
20 **that it was very true that people needed**
21 **assistance.**

22 **Q.** Tell The Court what you observed that
23 made you aware of that fact?

24 **A. People would come out stumbling, not**
25 **being able to stand, falling down almost over each**

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1 other. And they did come out in a one-by-one
2 fashion, which was different from what I saw how
3 the happening in 2005.

4 But many of them were in bad shape. And
5 they were already when I came down there. And in
6 the round that I saw happening in between before
7 the total procedure was over, the people that had
8 come out were not in good shape. The James Ray
9 staff, Dream Teamers and staff, would use hoses to
10 cool them down. Many people were not -- obviously
11 not feeling well.

12 Q. What did you do?

13 A. I did whatever I could to assist any
14 person that I saw. Bring them water, again started
15 to tear blankets from under the final cover of the
16 sweat lodge. And most of all looking where
17 somebody needed the most help. Because there was
18 so many people -- they started to come out, there
19 was so many people that needed assistance that I
20 did not stay with one person in particular.

21 Q. And after rendering assistance to those
22 people that you could, what did you do?

23 A. Then at some point the person who was
24 leading the fire, she said that people really,
25 really needed help. We had to call 911. Later we

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1 found out that the two that eventually were found
2 dead. And when she said we need to call 911, I
3 jumped on my golf cart to go to a phone. And she
4 jumped on another golf cart to go to a phone. We
5 both called 911. She was just a second before me.
6 So that's why her voice has been heard. My voice
7 has been recorded.

8 When I called the 911 people, they told
9 me that they had somebody on the line. Was that
10 the same place? I said yes, it is. So then --
11 okay. I left and went back to the site to see
12 whatever I could do to assist. And another thing.
13 We had one of our staff who was a retired nurse,
14 and I went to find her.

15 Q. Who is that?

16 A. Sue Ellen Chaney-Tromber, Tromber-Chaney.

17 Q. And who is your other -- you mentioned
18 that the other person who called 911. Who was
19 that?

20 A. Debby Mercer.

21 Q. After calling 911 where did you go?

22 A. To first find that person of our staff
23 who could -- so that we would have everybody on
24 board who could give any assistance that we would
25 be around.

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1 Q. Then what did you and your staff nurse
2 do?

3 A. Our staff nurse had the same -- she
4 stayed with one person in particular who was --
5 also came out of the lodge in a very poor state.
6 And she was taking care of him until the paramedics
7 came and took over for her. And she assisted
8 wherever she could, whatever she needed, whatever
9 she saw, who help was needed with her that's a
10 trained nurse's eye.

11 Q. Can you estimate approximately how many
12 people were in some form of physical distress.

13 A. At least 30.

14 Q. You testified earlier about what happened
15 to Daniel Pfankuch in 2005. Did you see anything
16 in 2009 that was similar to what you had observed
17 in 2005 with respect to Daniel?

18 A. Yes.

19 MR. LI: Your Honor, I'm going to object. I'm
20 assuming she's not going to make a medical
21 diagnosis. If it's just what she saw, I have no
22 objection.

23 THE COURT: I'm assuming just purely
24 observation?

25 MS. POLK: Yes.

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1 THE COURT: You may continue.

2 Q. BY MS. POLK: What was it that you
3 observed in 2009 that reminded you of what had
4 happened to Daniel?

5 A. I saw one person who was completely
6 losing her mind, who was surrounded by some people
7 who were trying to help her. She did not hear
8 them. The similar observation that I had with
9 Daniel.

10 Q. Do you know the name of that person?

11 A. Christina Bevins.

12 Q. And were you with her?

13 A. I was standing three feet away from her.
14 And since there were people around her who were
15 helping her, who I do not know who they were, but
16 people from the group -- I observed that Christina
17 was evidently -- she was calling for James Ray.
18 She was calling James, help me, James, help me.

19 And James was standing on the other side
20 15 feet away, and he looked at her. He heard her
21 yell because she was loud. And he did not come
22 over. And I was in shock. How could he do that?

23 Q. What was done for Christina Bevins?

24 A. They tried to calm her down, gave her
25 water, tried to make her drink, held her in their

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1 **arms and tried to talk to her. And eventually she**
 2 **came to. She did not have to wait until the 911**
 3 **people come.**

4 Q. How long, Miss Hamilton, were you at the
 5 scene of the sweat lodge itself in 2009 after the
 6 ceremony ended?

7 A. **Until 4:00 o'clock in the morning. Not**
 8 **on the site but with the people.**

9 Q. How long were you on the site?

10 A. **I would estimate until 7:30ish because by**
 11 **then most of the people had been going to their**
 12 **room and were requested to go to the dining room.**
 13 **By that time I knew that two people who had been**
 14 **taken to the hospital had died. So I knew that**
 15 **there would come a point that that had to be shared**
 16 **with the group.**

17 **So when the police was kind of -- the**
 18 **detectives were taking the place for the research.**
 19 **And when I knew the --**

20 MR. LI: Your Honor, I'm going to object. All
 21 this is irrelevant.

22 THE COURT: Sustained.

23 Q. BY MS. POLK: Mrs. Hamilton, you've made
 24 several references to rounds. And it occurs to me
 25 I probably got ahead in terms of your testimony.

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1 Can you explain to the court how a sweat lodge
 2 ceremony is conducted and what you mean when you
 3 say a "round" ?

4 A. **A facilitator asks the people who are**
 5 **conducting the fire to bring in the rocks. And**
 6 **then they are put in the pit. And then when the**
 7 **rocks, determined by the facilitator, are complete,**
 8 **then they close the door. And then the facilitator**
 9 **will do prayers, songs. That depends on how a**
 10 **person is leading the ceremony. Meditation.**

11 Q. Would that be one round?

12 A. **And then at the certain point the**
 13 **facilitator would determine that we will open the**
 14 **door again and bring in more stones. So a round is**
 15 **from when the door closes to when the door opens**
 16 **again. That is a round.**

17 Q. Approximately how long, if you know, were
 18 the rounds when James Ray conducted sweat lodge
 19 ceremonies?

20 A. **Between 10 and 15 minutes.**

21 Q. And inside that sweat lodge once the door
 22 is closed, is there any light?

23 A. **No.**

24 Q. How dark is it?

25 A. **Dark. Completely dark.**

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1 Q. And you testified that for the 2009 sweat
 2 lodge ceremony you believe there were eight rounds?

3 A. **Yes.**

4 Q. You said it started at 3:00 p.m. Do you
 5 know at approximately what time you were there --
 6 what time did it finally end? Do you know?

7 A. **The people started to come out after**
 8 **5:00, 10 past 5:00.**

9 MS. POLK: May I have a moment, Your Honor?

10 THE COURT: Yes.

11 Q. BY MS. POLK: Thank you, Mrs. Hamilton.
 12 Your Honor, I have no further questions
 13 at this time?

14 THE COURT: Thank you.

15 Mr. Li?

16 MR. LI: Thank you, Your Honor.

17 (Pause in proceedings.)

18 CROSS-EXAMINATION

19 BY MR. LI:

20 Q. Good morning, Mrs. Hamilton.

21 A. **Good morning.**

22 Q. You and your husband, Michael Hamilton,
 23 you own and operate the Angel Valley Retreat?

24 A. **We do.**

25 Q. How long have you owned the facility?

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1 A. **Since 2002.**

2 Q. And this is a place you offer as a
 3 spiritual center; is that correct?

4 A. **Yes.**

5 Q. Visitors can come to the center and -- as
 6 individuals or as groups?

7 A. **Yes.**

8 Q. Do you charge them for your services?

9 A. **Yes.**

10 Q. Now, you provide a number of spiritual
 11 services, do you not, at your retreat center?

12 A. **We do.**

13 Q. One activity that you provide is a sweat
 14 lodge; correct?

15 A. **We provide retreats, and we used to. If**
 16 **a facilitator had desire to do a sweat lodge, yes.**
 17 **We would make that possible.**

18 Q. Okay. In fact, that was one of the
 19 services that you offered to --

20 A. **Yes.**

21 Q. So you did offer those services, sweat
 22 lodge services, to people who come to your retreat
 23 center?

24 A. **Yes.**

25 Q. Now, James Ray didn't make you offer

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1 those services to the other people who were coming
 2 to enjoy your services, did he?
 3 **A. No.**
 4 **Q.** Now, you provided sweat lodge ceremonies
 5 since 2003 all the way up through 2009?
 6 **A. Yes, we did.**
 7 **Q.** And you charged for those sweat lodge
 8 services; correct?
 9 **A. We did.**
 10 **Q.** You charge for the lodging?
 11 **A. We do.**
 12 **Q.** You charge for meals?
 13 **A. We do.**
 14 **Q.** You charge for a facilitator if they ask
 15 you to provide a facilitator?
 16 **A. If they ask us to provide a facilitator,**
 17 **we do it. Yes.**
 18 **Q.** And that would be one of the services
 19 that you would offer to the people who come to the
 20 Angel Valley Retreat; correct?
 21 **A. Yes.**
 22 **Q.** Now, you met Mr. Ray in approximately
 23 2003?
 24 **A. We did.**
 25 **Q.** And this was for a five-day retreat in
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1 which you provided lodging to the participants?
 2 **A. In 2003, no. We did not provide the**
 3 **lodging.**
 4 **Q.** And you met him because he was looking at
 5 your facility and perhaps was going to use it for
 6 the Spiritual Warrior; correct?
 7 **A. But that was not the initial request.**
 8 **The initial request was to provide a place for a**
 9 **sweat lodge and a Vision Quest. And what would**
 10 **happen, next that was totally open.**
 11 **Q.** And you provided a place for a sweat
 12 lodge and a Vision Quest?
 13 **A. We did.**
 14 **Q.** Now, he didn't build the sweat lodge in
 15 the 2003 event, did he?
 16 **A. He did not.**
 17 **Q.** Now, after 2003 Mr. Ray came back and
 18 brought his group with him, did he not?
 19 **A. He did.**
 20 **Q.** And you charged -- you created a package
 21 for him in which he would provide lodging?
 22 **A. Yes.**
 23 **Q.** And meals?
 24 **A. Yes.**
 25 **Q.** And also the facilities for a sweat
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1 lodge; correct?
 2 **A. Yes.**
 3 **Q.** Now, did you charge Mr. Ray for the sweat
 4 lodge?
 5 **A. Yes, we did.**
 6 **Q.** How much did you charge him?
 7 **A. The amount? Exact amount? I don't have**
 8 **that right off my head.**
 9 **Q.** How much did you charge per person for
 10 the lodging and meals?
 11 **A. That varied. That went up through --**
 12 **became more through the years because James Ray's**
 13 **requests went up. So we charged him in 2009 more**
 14 **per person than in 2004.**
 15 **Q.** Okay. So you charged more in 2008 and
 16 2009 than in 2004. How much did you charge?
 17 **A. I do not know. As I say, I do not have**
 18 **the exact amounts with me.**
 19 **Q.** Hundreds of dollars? Thousands? What
 20 was the amount?
 21 **A. In 2009 we charged for -- per participant**
 22 **for the six-day retreat an amount of \$1,600.**
 23 **Q.** Per participant?
 24 **A. Yes.**
 25 **Q.** I'm not horrible at math, but there were
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1 some 50-some-odd participants?
 2 **A. You say you're good at math.**
 3 **Q.** You charged 1,600 per participant?
 4 **A. Yes, we did.**
 5 **Q.** I'd like to talk to you a little bit
 6 about the sweat lodges Angel Valley built for
 7 Mr. Ray in 2003, four and 2009 if we could. As I
 8 understand it, you hired a person to design the
 9 sweat lodge. Is that correct?
 10 **A. Yes.**
 11 **Q.** Every year?
 12 **A. Every time.**
 13 **Q.** Every time. Sorry. And Mr. Ray didn't
 14 hire that person; is that correct?
 15 **A. No. We did.**
 16 **Q.** Sorry?
 17 **A. We did.**
 18 **Q.** And you hired people to build the sweat
 19 lodges; correct?
 20 **A. We did.**
 21 **Q.** And it wasn't Mr. Ray who hired the
 22 people, was it?
 23 **A. We hired the people and we paid the**
 24 **people. And that was part of what James Ray**
 25 **compensated us for.**

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- 1 Q. Okay. And other groups as well?
- 2 A. **And other groups too. Yes.**
- 3 Q. You hired people to assist in the
- 4 ceremonies -- fire tenders for instance?
- 5 A. **We did. If it was not -- if it were**
- 6 **not part of our staff, we would hire people from**
- 7 **outside.**
- 8 Q. And it was not Mr. Ray?
- 9 A. **That was not Mr. Ray.**
- 10 Q. You provided the stones and the
- 11 grandfathers, as it were, for the ceremonies?
- 12 A. **Yes.**
- 13 Q. You also provided the wood that would be
- 14 used both in the sweat lodge and also -- first in
- 15 the sweat lodge?
- 16 A. **Yes.**
- 17 Q. And those were the willows taken from the
- 18 creek?
- 19 A. **Yes.**
- 20 Q. And you also provided the wood that be
- 21 used to burn to heat up the rocks; is that correct?
- 22 A. **Yes. Our staff would. Yes. Angel**
- 23 **Valley would. Yes.**
- 24 Q. So you would?
- 25 A. **Well, yes.**

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- 1 Q. And it wasn't Mr. Ray who was providing
- 2 any of that services, was it?
- 3 A. **No.**
- 4 Q. And he didn't tell you where to go get
- 5 the willows from your own property, did he?
- 6 A. **No.**
- 7 Q. He didn't tell you where to get the
- 8 rocks?
- 9 A. **No.**
- 10 Q. He didn't tell you where to get the wood
- 11 to burn?
- 12 A. **No.**
- 13 Q. He didn't tell you where to get the
- 14 tarps?
- 15 A. **No.**
- 16 Q. Now, if I understand your testimony
- 17 correctly, that every sweat lodge that you ever
- 18 used at Angel Valley was designed by and
- 19 coordinated with a Native American who had
- 20 expertise?
- 21 A. **Uh-huh.**
- 22 Q. That would include the sweat lodge built
- 23 in 2008?
- 24 A. **Yes.**
- 25 Q. And that sweat lodge, the 2008 sweat

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- 1 lodge, was the same sweat lodge that was used in
- 2 2009; is that correct?
- 3 A. **Yes.**
- 4 Q. And for that sweat lodge -- I'll call it
- 5 the "2008-2009 sweat lodge" -- you hired a Cherokee
- 6 elder by the name of David Singing Bear; is that
- 7 correct?
- 8 A. **We did.**
- 9 Q. That was the name you couldn't recall
- 10 when Ms. Polk was asking --
- 11 A. **No. When she as asking me, I could not**
- 12 **recall the name of the person who built the sweat**
- 13 **lodge in 2007.**
- 14 Q. I see. I see. Okay.
- 15 A. **The person in 2008 I could find it out.**
- 16 **The person of 2008 that built in 2008, the same**
- 17 **structure that was still up in 2009, that's David**
- 18 **Singing Bear.**
- 19 Q. My mistake. I misheard. So it's David
- 20 Singing Bear who helped design and build the lodge
- 21 for 2008-2009; correct?
- 22 A. **He designed it and was supervising the**
- 23 **actual construction of it.**
- 24 Q. And David Singing Bear has built hundreds
- 25 of lodges before he built the one in 2008?

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- 1 A. **Yes.**
- 2 Q. And he has -- you hired him because he
- 3 was an expert in building lodges?
- 4 A. **Yes.**
- 5 Q. Mrs. Hamilton, I appreciate your
- 6 cooperation with me. I have to be able to finish
- 7 my question because the court reporter will have
- 8 difficulties taking everything down. And I'm sorry
- 9 if my questions are too long.
- 10 A. **Okay.**
- 11 Q. So Mr. Singing Bear or David Singing Bear
- 12 in his hundreds of sweat lodges before, in the
- 13 hundreds of sweat lodges he had done before, he had
- 14 done small sweat lodges; correct?
- 15 A. **He had.**
- 16 Q. And he'd done very large sweat lodges;
- 17 correct?
- 18 A. **A few.**
- 19 Q. Over a hundred?
- 20 A. **He had.**
- 21 Q. And it was okay with him, wasn't it, to
- 22 do a sweat lodge with over a hundred people in it?
- 23 A. **He preferred building smaller sweat**
- 24 **lodges because that was more usual --**
- 25 Q. I understand.

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1 **A. -- and easier.**

2 **Q.** I understand. But it was absolutely
3 normal for him also to build lodges with over a
4 hundred people; isn't that correct?

5 **A.** You would have to ask him how normal that
6 is.

7 **Q.** In fact -- we'll, get back to that.
8 Other than Mr. Ray telling you how many people he
9 needed for his ceremonies or how much room he
10 needed for his ceremonies, Mr. Ray didn't have
11 anything to do with the design of the sweat lodge,
12 did he?

13 **A.** No.

14 **Q.** And, in your opinion, the 2008 and 2009
15 sweat lodge was constructed correctly; right?

16 **A.** It was.

17 **Q.** Now, Ted and Debby Mercer -- they worked
18 for you in -- for the last three years?

19 **A.** Ted and Debby Mercer were volunteers in
20 2007, were on staff in 2008, were contracted for
21 this particular -- to do the fire of this
22 particular ceremony in 2009.

23 **Q.** And you also hired Ted and Debby Mercer
24 to build the sweat lodge used by Mr. Ray in 2007;
25 is that correct?

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1 **A.** We did not. They were assisting just
2 because they loved being part of it.

3 **Q.** Understood. Okay. But they helped build
4 it; correct?

5 **A.** Yes.

6 **Q.** Now, did Ted and Debby Mercer have any
7 experience at all in building sweat lodges before
8 2007?

9 **A.** I don't think so. But they were not in
10 charge. They were just helpers.

11 **Q.** You also hired Mr. Mercer to be what is
12 called a "fire tender" in Mr. Ray's sweat lodge
13 ceremonies in 2007, 2008 and 2009; is that correct?

14 **A.** Not in 2007.

15 **Q.** So he just volunteered in 2007?

16 **A.** In 2007 he was a helper both in
17 construction and in the fire.

18 **Q.** Who was the fire tender in 2007?

19 **A.** I don't know the name.

20 **Q.** So Mr. Mercer just helped that person?

21 **A.** Yes.

22 **Q.** But he was the fire tender in 2008?

23 **A.** He was.

24 **Q.** And he was also the fire tender in 2009?

25 **A.** He was.

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1 **Q.** And Miss Mercer, Debby Mercer, assisted
2 Ted, Ted Mercer, as a fire tender all three times;
3 is that correct?

4 **A.** In 2008 and 2009 they both did that
5 together. In 2007 they both were just helping the
6 person who was at that time in charge of the fire.

7 **Q.** So Miss Mercer was helping -- was also
8 helping Mr. Mercer in his efforts in 2008?

9 **A.** They were helping each other.

10 **Q.** They were helping each other. That's
11 perhaps a better way to put it. The fire tender is
12 the person who tends the fire and heats up the
13 stones; correct?

14 **A.** Yes.

15 **Q.** Now, these are the stones that go inside
16 the sweat lodge?

17 **A.** Yes.

18 **Q.** And now, Mr. Mercer and Mrs. Mercer
19 helped -- or Miss Mercer helped build the sweat
20 lodge and tend the fire as part of their services
21 to you at Angel Valley; is that correct?

22 **A.** It was a combination. If they would not
23 have been on staff because they were -- they had a
24 passion for it -- they would have been there as
25 volunteer just as much.

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1 **Q.** I guess what I'm asking is a little less
2 about their motivation and more about who was in
3 charge.

4 **A.** Okay.

5 **Q.** They were working for Angel Valley; is
6 that correct?

7 **A.** And our general manager gave them that
8 task to do that, which they gladly wanted to take.

9 **Q.** But ultimately you own Angel Valley, so
10 you're responsible for all the people working at
11 Angel Valley; isn't that right?

12 **A.** The ultimate responsibility is there.
13 Yes.

14 **Q.** So you hired them, asked them to help you
15 and instructed them what to do; isn't that right?

16 **A.** I did not instruct them what to do. The
17 general manager was directly working with them.
18 And he -- it was his discretion to feel that they
19 could do that.

20 **Q.** So if anything went wrong, it's his
21 fault? Is that what you're telling us?

22 **A.** I'm not telling you it's anybody's fault.
23 I think that's up to the Judge and the jury.

24 **Q.** All right. But what I'm getting at is
25 you hired Mr. Palisch to be the general manager;

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1 correct?
 2 **A. Yes.**
 3 **Q.** And these other folks, the Mercers, were
 4 working for Angel Valley; correct?
 5 **A. Yes.**
 6 **Q.** And you own Angel Valley; correct?
 7 **A. Yes.**
 8 **Q.** Now, they used whatever material -- this
 9 is now the Mercers. They used whatever materials
 10 to build the sweat lodges that you, Angel Valley,
 11 provided; correct?
 12 **A. I'm not sure what you mean by "whatever**
 13 **material" .**
 14 **Q.** When the sweat lodge was built, there
 15 were certain materials; correct?
 16 **A. Yes.**
 17 **Q.** And Angel Valley provided those materials
 18 to the Mercers; correct?
 19 **A. I shared with you that the construction**
 20 **of the sweat lodge were willow branches that were**
 21 **found along the creek at Angel Valley.**
 22 **Q.** Right. And you were the folks, as in
 23 Angel Valley -- you were the people responsible for
 24 picking those particular branches?
 25 **A. Angel Valley is our property.**
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1 **Q.** And the wood that was used to burn in the
 2 fire -- that was provided by Mr. Hamilton and by
 3 you; correct?
 4 **A. That was found on the property.**
 5 **Q.** And it was provided by you and
 6 Mr. Hamilton; correct?
 7 **A. We are owners of the property, and the**
 8 **wood that was found on the property was used for**
 9 **the ceremony. Yes.**
 10 **Q.** So you provided it to them? I just want
 11 to make sure --
 12 **A. I hear you.**
 13 **Q.** Let's just -- can we -- you provided it
 14 to them, didn't you?
 15 MS. POLK: Your Honor, objection.
 16 Argumentative.
 17 THE COURT: Overruled.
 18 You may answer that, ma'am.
 19 **Q.** BY MR. LI: You provided the wood to the
 20 Mercers to use; correct?
 21 **A. What I'm saying is we are the owners of**
 22 **the property. The wood was found on the property.**
 23 **And in 2009 we provided the logs that were**
 24 **leftovers from the logs from the cabins that we**
 25 **have built.**

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1 **Q.** And you bought the logs to build the
 2 cabins; didn't you?
 3 **A. We did.**
 4 **Q.** Right. So they weren't found on the
 5 property. You had bought them, and they were
 6 sitting on the property because you bought them;
 7 correct?
 8 **A. Uh-huh.**
 9 **Q.** And then you provided those logs to the
 10 Mercers to use in the fire; correct?
 11 **A. Yes.**
 12 **Q.** That's all I'm asking.
 13 **A. Okay.**
 14 **Q.** You also provided the plastic tarps that
 15 were used in the sweat lodges in 2008, 2009?
 16 **A. We provided all the coverings that were**
 17 **used from 2005 to -- all those years.**
 18 **Q.** Including the plastic tarps; correct?
 19 **A. Including the final covering that has**
 20 **been used from 2005 to 2009.**
 21 **Q.** Ma'am, I'm just asking you the plastic
 22 tarps. Did you provide the plastic tarps to the
 23 Mercers to build the sweat lodge?
 24 **A. We provided all the coverings, Mr. Li.**
 25 **Is that correct?**
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1 **Q.** Now, you also provided them with the
 2 stones?
 3 **A. Yes. Our landscapers found the stones**
 4 **along the creek.**
 5 **Q.** And Mr. Ray had nothing to do with
 6 choosing any of that material for use during the
 7 ceremony; correct?
 8 **A. He did not, other than he could check**
 9 **anything we had prepared for him.**
 10 **Q.** You have a lawsuit with Mr. Ray, right
 11 now, don't you?
 12 **A. We do.**
 13 **Q.** Now in 2008, Mr. Ray requested a sweat
 14 lodge that would hold approximately 75 people;
 15 correct?
 16 **A. He requested that in 2007 and repeated**
 17 **that request in 2008.**
 18 **Q.** Okay. You hired Mr. Singing Bear, David
 19 Singing Bear, and Ted Mercer to build the sweat
 20 lodge that would hold 75 people; is that correct?
 21 **A. Ted Mercer was only assisting.**
 22 **Q.** Okay. But you hired David Singing Bear
 23 to build that lodge; correct?
 24 **A. Yes.**
 25 **Q.** And a sweat lodge for 75 people was no
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1 big deal; is that correct? That's your opinion --
2 strike that.

3 Let me ask you this: Ma'am, you were
4 interviewed by Detective Diskin shortly after the
5 incident; isn't that correct?

6 **A. I was.**

7 **Q.** And during that interview you told
8 Detective Diskin --

9 MS. POLK: Your Honor, this is improper
10 impeachment. You can't confront a witness with a
11 prior statement if the witness is willing to admit
12 it on the stand. And he hasn't established that
13 she is not willing to testify to any testimony or
14 any statements that were made during the interview
15 of Detective Diskin.

16 THE COURT: Mr. Li, I don't believe there has
17 been anything that's inconsistent at this point.

18 **Q.** BY MR. LI: A sweat lodge for 75 people
19 is, quote, unquote "no big deal"; is that correct?
20 Is that your opinion today?

21 **A. A sweat lodge for 75 people is unusual.**
22 **I have shared earlier that we did not like that**
23 **idea, that we have tried to talk Mr. Ray out of**
24 **doing it for this amount of people. When he**
25 **refused to review that, we decided okay. Let's see**

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1 **whether we can do that. It goes too far to say**
2 **it's no big deal because then you go into a**
3 **personal opinion. I think it is a big deal. I**
4 **think you should not do that.**

5 **Q.** Now, you currently say you think it is a
6 big deal to build a sweat lodge for more than 75
7 people -- or for 75 people?

8 **A. Structurally it is possible to do it**
9 **safely.**

10 **Q.** Ma'am, the question is yes or no. You
11 are currently testifying that you think it's a big
12 deal to build a sweat lodge for 75 people?

13 **A. I think it is.**

14 **Q.** Now, isn't it true that shortly after the
15 incident you spoke to Detective Diskin and told him
16 that a sweat lodge for 75 people was no big deal?

17 **A. What I'm saying there is that it is**
18 **possible to build a safe structure that can hold 75**
19 **people.**

20 **Q.** So the answer is yes, you did tell
21 Detective Diskin shortly after the incident that a
22 sweat lodge for 75 people was no big deal?

23 **A. If that's what you read in my interview,**
24 **then that's what I said.**

25 **Q.** Did you say that?

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1 **A. I guess you read it in the interview, so**
2 **I guess I did.**

3 **Q.** Now, you also have said that David
4 Singing Bear has built many sweat lodges that hold
5 more than a hundred people; correct?

6 MS. POLK: Your Honor, objection. The same
7 objection to the use of prior statements until it's
8 established there is inconsistent testimony today.

9 MR. LI: I'm not impeaching.

10 THE COURT: Mr. Li, I'm sorry?

11 MR. LI: I'm sorry. I'm not impeaching, Your
12 Honor. I'm just asking her what she said.

13 THE COURT: We're under Rule 104. I think
14 that's the third or fourth time I've said it.

15 You may continue.

16 **Q.** BY MR. LI: David Singing Bear has built
17 many sweat lodges that hold over a hundred people;
18 correct?

19 **A. No.**

20 **Q.** He has built sweat lodges that hold over
21 a hundred people; correct?

22 **A. Yes. To my knowledge. You would have to**
23 **ask him how many.**

24 **Q.** So it's your opinion today that a sweat
25 lodge of 55 people is too big; correct?

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1 **A. My opinion today is that a sweat lodge**
2 **should be the normal size of 10, 15.**

3 **Q.** Okay. And yet, I think you testified
4 earlier that Mr. Singing Bear had had sweat lodges
5 on your property of I think it was 50 at one
6 occasion and another sweat lodge of approximately
7 20?

8 **A. Yes.**

9 **Q.** And David Singing Bear is the person you
10 hire as the expert; correct?

11 **A. Uh-huh.**

12 **Q.** Yes?

13 **A. Yes.**

14 **Q.** He is the person who you hire because of
15 his knowledge about how sweat lodges should be
16 operated; correct?

17 **A. Absolutely.**

18 **Q.** And, in fact, he was the facilitator --
19 correct? -- during the sweat lodge with 50 people
20 in it; correct?

21 **A. Yes.**

22 **Q.** And he thought that was okay, didn't he?

23 **A. Yes. Because it didn't depend on how you**
24 **perform that -- you adjust the method with which**
25 **you conduct that ceremony.**

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1 Q. So there is nothing about a 50-person
2 sweat lodge in and of itself that you have a
3 problem with?

4 A. **It can be done safely.**

5 Q. Okay. So sweat lodges of 50 people can
6 be done safely; correct?

7 A. **Can be done safely. Yes.**

8 Q. Now, if we could talk for a second about
9 your interview with Detective Diskin on or about
10 October 26, 2009. You recall that interview?

11 A. **I do.**

12 Q. Now, you had an attorney representing you
13 at that time at that interview, did you not?

14 A. **I did.**

15 Q. And his name is Mark Zukowski; is that
16 correct?

17 A. **That's correct.**

18 Q. And when you sat down with
19 Detective Diskin during this interview,
20 Detective Diskin told you that right away, right in
21 the beginning, that you are not in any kind of
22 trouble criminally? We're not investigating you or
23 your husband; is that right?

24 A. **If that's what you read, then that's**
25 **correct.**

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1 Q. And, in fact, you knew that you were not
2 under investigation by Detective Diskin when he
3 interviewed you; right?

4 A. **At that moment I did.**

5 Q. And you knew no matter what you said, you
6 wouldn't be criminally charged; correct?

7 A. **I don't know. I have not experience with**
8 **criminal situations.**

9 Q. Now, that same day on October 26, Fawn
10 Foster also spoke to Detective Diskin -- detectives
11 Diskin and Pollings; correct?

12 A. **Yes.**

13 Q. And Mr. Zukowski, who also was
14 representing you and your husband and Angel
15 Valley -- he was also present for that interview?

16 A. **Yes.**

17 Q. You provided her with a lawyer when they
18 were -- when the detectives were going to talk to
19 her; correct?

20 A. **Yes.**

21 Q. I mean, she didn't pay for that, did she?

22 A. **No.**

23 Q. You paid for that?

24 A. **Yes.**

25 Q. Now, she also had an agreement with the

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1 detectives that she wouldn't be prosecuted for
2 anything she said; isn't that right?

3 MS. POLK: Judge, objection. No foundation.

4 And, Judge, I also disagree to the use of the word
5 "agreement".

6 MR. LI: I'm just asking questions, Your
7 Honor.

8 THE COURT: There is a good faith basis for
9 it.

10 Mr. Li, go ahead and pose your question.

11 MR. LI: Thank you, Your Honor.

12 Q. Now, did you have a prior agreement with
13 the state or with Detective Diskin in which you
14 would talk to the detectives with your lawyer
15 and -- did you have a prior agreement about that,
16 that a lawyer would come?

17 A. **That the lawyer would come? Yes.**

18 Q. And did your lawyer talk to the state
19 about the conditions under which you would speak to
20 Detective Diskin?

21 A. **Not that I remember.**

22 Q. You don't remember one way or the other?
23 Could I ask you if you have an agreement with the
24 state about the fact that you won't be prosecuted
25 if you have such an agreement? Excuse me. If you

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1 have such an agreement or if your lawyer has such
2 an agreement, could I ask you to provide that to
3 us?

4 A. **I have no such agreement.**

5 Q. If you do, please provide it to us.

6 A. **I don't have such.**

7 Q. Now, on that date in that interview with
8 Detective Diskin, you told Detective Diskin that
9 David Singing Bear had built hundreds of sweat
10 lodges and had built lodges that hold more than a
11 hundred people so 75 was not that big of a deal;
12 isn't that correct?

13 MS. POLK: Counsel, could I have a page
14 reference.

15 MR. LI: Nine at lines 4 through 7.

16 Q. Is that correct?

17 A. **He said he could do it.**

18 Q. But you said that he had built these
19 sweat lodges that would hold more than a hundred --
20 that David Singing Bear had built lodges that would
21 hold more than more than hundred people so 75 was
22 not a that big of a deal; is that correct?

23 A. **Yes.**

24 Q. Now, I want to talk a bit about the
25 lawsuits that you are currently facing. You've

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1 been sued by the families of the people who have
2 passed away?

3 **A. We are.**

4 **Q.** You've also in that same lawsuit been
5 sued by Steven Ray, Sidney Spencer, Sandra
6 Andretti, Dennis Mehravar, Beverly Bond, Brandy
7 Rainy Amstel and Sean Ronin; is that correct?

8 **A. That's correct.**

9 MS. DO: May I approach, Your Honor?

10 THE COURT: Yes.

11 (Pause in proceedings.)

12 THE COURT: Mrs. Hamilton is indicating she
13 needs to have her glasses.

14 You may do that, ma'am. Go ahead.

15 (Pause in proceedings.)

16 MS. DO: Your Honor, may I approach?

17 THE COURT: Yes, you may.

18 MS. DO: Consistent with this court's
19 protocol, premarked exhibits 1 through 59 and we
20 are providing the Court through the court clerk
21 with a binder for the bench.

22 THE COURT: Okay. Ms. Polk, have you seen
23 them all? Are there going to be objections?

24 MS. POLK: Your Honor, I have not seen them.
25 I don't know what they are. I'm not sure what

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1 they're intending at the moment.

2 THE COURT: Okay.

3 MR. LI: Your Honor, let me just clarify.

4 Basically, we've provided a bench book so we can do
5 this in a quick fashion. We're not moving to admit
6 anything until Ms. Polk has been able to see it.
7 We're not asking to publish anything. We put them
8 all in the binder with tabs so the Court would have
9 them and it will be more efficient.

10 THE COURT: Okay. We'll see what happens with
11 each exhibit. Thank you.

12 **Q.** BY MR. LI: Now, we've been talking about
13 a lawsuit with the folks who passed away in this
14 case haven't we? Yes?

15 **A. Yes.**

16 **Q.** Okay. And in that lawsuit you filed an
17 affidavit that you signed -- a five-page affidavit?

18 **A. For?**

19 **Q.** Did you file a five-page affidavit in the
20 lawsuit involving the victims or the folks who
21 passed away in this case?

22 **A. I'm not completely aware what you're**
23 **referring to.**

24 MS. POLK: Your Honor, could we have some
25 foundation. I'm not aware what lawsuit he's

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1 referring to. Is there a court number specific --

2 MR. LI: Sure.

3 THE COURT: I'm going to suggest we break for
4 lunch right know. And I want to make sure Ms. Polk
5 can look through the exhibits. Because I'd like to
6 have the bench book here. I think that's the idea.
7 So I can keep up with the exhibits that are being
8 offered.

9 So if you could do that, Ms. Polk, during
10 the break. And also anything else, any other
11 evidence that you anticipate offering, if Ms. Polk
12 could see that.

13 MR. LI: We've handed her a red well with all
14 of the exhibits that are contained in the bench
15 book.

16 THE COURT: So why don't we -- excuse me --
17 resume, then, at 1:15, break now.

18 And, Mrs. Hamilton, I'll again remind you
19 of that rule of exclusion. You understand that?

20 THE WITNESS: Yes, I do.

21 THE COURT: Thank you. We'll be in recess.
22 (Recess.)

23 THE COURT: The record will show the presence
24 of all the attorneys who I announced at the outset.
25 Mr. Ray has waived his appearance at this

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1 proceeding Mrs. Hamilton is on the stand and has
2 previously been sworn.

3 Mr. Li?

4 MR. LI: Thank you, Your Honor.

5 **Q.** Mrs. Hamilton, where we left off, we were
6 talking about the size of the lodge, if you recall.
7 Now, you had previously told Detective Diskin,
8 among others, that a lodge built for 75 people was
9 no big deal; correct?

10 **A. A lodge built for 75 people can be done**
11 **safely. And ceremony can be conducted safely**
12 **inside that too, even though it's unusual size.**

13 **Q.** But you had told Detective Diskin that
14 it's no big deal; right?

15 **A. You have read my papers.**

16 **Q.** Would you like to hear the tape?

17 **A. I'm fine. I will not deny that I said**
18 **it's going to be done safely. And then I say no**
19 **big deal, that that is what it implied.**

20 **Q.** Okay. So you did say that it was no big
21 deal, that it was no big deal?

22 **A. Yes.**

23 **Q.** Thank you.

24 MR. LI: Now, Your Honor, if I may approach.
25 I apologize, Your Honor. I think the clerk has the

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1 exhibit. It's Exhibit 79, but it's labeled No. 46
2 in your bench book.
3 (Pause in proceedings.)
4 THE COURT: Feel free to retrieve the
5 exhibits.

6 MR. LI: I'm approaching the witnesses with
7 Exhibit No. 79, tab 46. Now, this is a five-page
8 document entitled "Affidavit of Amayra Hamilton."

9 Q. Do you recognize this document,
10 Miss Hamilton?

11 A. I do.

12 Q. This is in a lawsuit. If I -- I'll move
13 it into evidence, Your Honor?

14 THE COURT: Any objection.

15 MS. POLK: Your Honor, I do object. This
16 is -- I'm not sure. Is this a document offered to
17 impeach the witness? If so, she hasn't made any
18 statements that are inconsistent. I'm just not
19 sure where we're going with this and under what
20 grounds it would be admissible.

21 THE COURT: Mr. Li, we started out the hearing
22 talking about going into certain events
23 unnecessarily and proceeding with an offer of
24 proof. So --

25 MR. LI: Yes, Your Honor.

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1 THE COURT: Again, if you could focus this.
2 What is your intention?

3 MR. LI: I will, Your Honor. There are two
4 major points that are in this document. The first
5 is that the defendant -- pardon me. That the
6 witness has offered a different recitation of how
7 the last -- the sweat lodges in 2003, four, five,
8 six, seven and eight appeared. That appears in her
9 affidavit, No. 1.

10 And, No. 2, she has testified -- she's
11 testified now that there are ways to conduct a
12 sweat lodge safely with 75 people. But when we
13 started off this conversation, she had testified
14 for the prosecution that her husband and she were
15 adamant that no sweat lodge could be conducted over
16 the size of 45. And in this affidavit she avers
17 something entirely different.

18 THE COURT: Overruled.

19 You may continue.

20 I'll admit 79 for purposes of this
21 hearing.

22 (Exhibit 79 admitted.)

23 MS. POLK: Your Honor, I understand it's been
24 overruled. But, for the record, I object to the
25 mischaracterization of her prior testimony that she

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1 was adamant that no sweat lodge could be conducted
2 safely with over 45 participants.

3 THE COURT: I think the witness has really
4 explained what she meant by "no big deal." Several
5 times now she's explained that talking about the
6 structure.

7 And so if you're going to use this --

8 MR. LI: It will be quick, Your Honor. I
9 promise.

10 Q. Mrs. Hamilton, you are a defendant in a
11 lawsuit brought by the various participants in the
12 sweat lodge incident; is that correct?

13 A. That's correct.

14 Q. And they are seeking to recover from you
15 money damages and other relief; is that correct?

16 A. That's correct.

17 Q. And you are defending yourself in that
18 lawsuit; correct?

19 A. We are.

20 Q. And in that defense you have filed an
21 affidavit with the Court in which you have,
22 essentially, sworn to a set of facts; is that
23 correct?

24 A. Yes.

25 Q. I'm going to ask you to look at page 3 --
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1 Which I will, publish, Your Honor.

2 So here you say David Singing Bear is an
3 expert in building sweat lodges in the American
4 Indian tradition. In addition to the hundreds of
5 lodges he has built of the usual size, he also has
6 experience in building large ones, even some to
7 accommodate over 100 people and many smaller ones.

8 Although the sweat lodge had the capacity
9 to hold 75 people, the sweat lodge ceremony held on
10 October 8, 2009, had a total of only 55
11 participants plus James Ray as the facilitator.

12 Did you -- when you signed this
13 affidavit, did you mean that -- is that true?

14 A. That's true.

15 Q. Now, there is another paragraph here that
16 says numerous sweat lodges ceremonies have been
17 performed at Angel Valley's property in the past
18 without mishap, including the 2008 Spiritual
19 Warrior retreat. When you signed the affidavit,
20 was that also true?

21 A. If mishap means that 911 was not called
22 in -- other than the one in 2005, yes.

23 Q. Other than the one in 2005, in which 911
24 was called, from 2006, seven, eight, up to 2008, no
25 mishaps had occurred?

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1 **A. As I say, if mishap means that 911 was**
2 **not called, then that's true.**

3 **Q.** What you mean by "mishap" is nothing bad
4 happened at those sweat lodge ceremonies; isn't
5 that correct?

6 **A. As I say, if 911 is not called, if that**
7 **is -- if the mishap is implied with calling 911,**
8 **the need for calling 911, yes.**

9 **Q.** Ma'am, I didn't write the affidavit and
10 use the term "mishap." What did you mean by the
11 term "mishap"?

12 **A. Exactly what I say.**

13 **Q.** That it doesn't involve calling 911?

14 **A. Yeah.**

15 **Q.** Now, let's talk about the prior sweat
16 lodges. In 2003, if we can focus on 2003, isn't it
17 correct that various participants complained that
18 the sweat lodge was not hot enough?

19 **A. That is incorrect. There was only one**
20 **person who complained about it. That was Mr. Ray.**

21 **Q.** A woman named Martha Stern didn't complain
22 that it was too cold?

23 **A. Not to me.**

24 **Q.** Okay. But did somebody complain? Other
25 than Mr. Ray did other people complain that the

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1 sweat lodge was too cool?

2 **A. Not in my memory.**

3 **Q.** Okay. Did you tell Detective Diskin that
4 Mr. Ray was right because if you have that size of
5 a lodge and you want to cover it in a way that
6 keeps the heat, it's not -- you know -- a small
7 lodge -- did you tell him, Detective Diskin, that
8 he was right, that it was not hot enough?

9 **A. That I understood why James Ray thought**
10 **it might not be hot enough, because it's really**
11 **difficult to get a sweat lodge of that size hot**
12 **enough.**

13 **Q.** So you understood that Mr. Ray might, in
14 your words, be right because it's very difficult to
15 get a sweat lodge that hot?

16 **A. Yeah.**

17 **Q.** And you don't know one way or another
18 whether a woman named Martha Stern complained that
19 it was too cold in 2003?

20 **A. Not in my memory that she complained that**
21 **to me.**

22 **Q.** Did she not complain that to you? Is
23 that your testimony?

24 **A. I do not remember ever talking with this**
25 **person about the temperature in the sweat lodge.**

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1 **And if she does, that may be my failed memory.**

2 **Q.** Now, earlier in your testimony today you
3 said the 2004 sweat lodge was also complained of
4 not being hot enough. And one of the reasons was
5 because it was built for 40 but there were only
6 approximately 12 participants?

7 **A. Yes.**

8 **Q.** So it was cooler?

9 **A. Yes.**

10 **Q.** If we could focus on the 2006 sweat
11 lodge, Miss Hamilton, in 2006 Mr. Ray held his
12 five-day retreat at the Angel Valley?

13 **A. Yes.**

14 **Q.** As part of that retreat he contracted
15 with you to have a sweat lodge?

16 **A. Yes.**

17 **Q.** Now, we'll get to 2005 in a second. But
18 because of the events in 2005, you specifically
19 stayed around the lodge in 2006 to make sure
20 everything was correct?

21 **A. Yes.**

22 **Q.** And you saw all the participants coming
23 out of the lodge in 2006?

24 **A. I did.**

25 **Q.** And you were alert and there was no
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1 reason why you couldn't perceive what was happen?

2 **A. No. I saw what was happening, and what I**
3 **saw was not giving me discomfort.**

4 **Q.** No one came out sick?

5 **A. Not to the degree that was sick.**

6 **Q.** No one came out vomiting?

7 **A. No.**

8 **Q.** No one passed out?

9 **A. No.**

10 **Q.** Nobody, in your opinion, required medical
11 attention?

12 **A. No.**

13 **Q.** Everything was fine in 2006; right?

14 **A. Yes.**

15 **Q.** And do you recall how many people there
16 were in that ceremony?

17 **A. I have my notes here. It was 43.**

18 **Q.** 40. And those participants, those 43
19 participants, had also participated in the Vision
20 Quest before they went into the lodge?

21 **A. Yes.**

22 **Q.** And for the same amount of time?

23 **A. Yes.**

24 **Q.** Meaning 36 hours approximately?

25 **A. Yes.**

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1 Q. Let's talk about the 2007 lodge. You
 2 were also there when Mr. Ray held the retreat in
 3 Angel Valley in 2007?
 4 A. I was.
 5 Q. And, again, you provided a sweat lodge
 6 for Mr. Ray?
 7 A. We did.
 8 Q. And you were also there when the
 9 participants came out of the sweat lodge?
 10 A. I was.
 11 Q. And there were no problems with any of
 12 the participants in 2007?
 13 A. Not that I was aware of.
 14 Q. No one came out sick?
 15 A. Not noticeable to my attention.
 16 Q. No one came out vomiting?
 17 A. I have not seen it.
 18 Q. No one passed out?
 19 A. I have not seen anybody pass out in 2007.
 20 Q. And no one, in your opinion, required
 21 medical attention; correct?
 22 A. Not to my awareness.
 23 Q. And these participants in the 2007 sweat
 24 lodge -- they also went on a Vision Quest before
 25 the sweat lodge; correct?

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1 A. They did.
 2 Q. Now, in the -- in your statement, you're
 3 affidavit, you say that no mishaps took place at
 4 any of the numerous sweat lodges. And I'll accept
 5 that you exempt from that 2005. No mishaps
 6 occurred at any of the sweat lodges including James
 7 Ray's 2008 spiritual retreat; correct?
 8 A. What I'm stating in there is what was in
 9 my awareness. I'm not testifying on what happened
 10 in 2008.
 11 Q. It doesn't say that my perception is that
 12 no mishaps took place including the 2008 Spiritual
 13 Warrior Retreat, does it?
 14 A. It is the affidavit that I signed. So I
 15 testified what I witnessed.
 16 Q. Right. And you did not --
 17 A. And what I was aware of.
 18 Q. And you did not witness any mishap at the
 19 2008 Spiritual Warrior Retreat?
 20 A. I did not witness it, and I was not aware
 21 of it. That does not include -- that does not
 22 imply that they were not there.
 23 Q. So you have no firsthand knowledge one
 24 way or another about what happened in the 2008
 25 sweat lodge?

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1 A. I do not.
 2 Q. Nevertheless, you testified or you filed
 3 an affidavit with the Court in which you say that
 4 no mishap took place --
 5 A. I filed --
 6 Q. Sorry, ma'am. If I may finish?
 7 A. Yes.
 8 Q. You filed an affidavit in an Arizona
 9 court saying that no mishap had taken place
 10 including the James Ray 2008 Spiritual Warrior
 11 Retreat?
 12 A. I was in that affidavit stating what I
 13 believe was statement what my truth of what I had
 14 witnessed.
 15 Q. But you're just telling us now you had
 16 have no idea what happened in 2008?
 17 A. Did not witness it. I was not present at
 18 the spot.
 19 Q. So is this affidavit false?
 20 A. Nothing false with the affidavit. There
 21 is other witnesses. And I cannot testify other
 22 witnesses.
 23 Q. Now, you were interviewed by
 24 Detective Diskin on October 26 when your lawyer was
 25 present and Detective Diskin and Pollings asked you

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1 if someone was, and I'm using their words, down for
 2 the count unconscious. Do you remember that about
 3 the 2008 sweat lodge?
 4 A. Uh-huh.
 5 Q. And your answer was you didn't know of
 6 anything like that happening; correct?
 7 A. My answer was that I didn't know.
 8 Q. Now, after the 2008 sweat lodge, almost a
 9 year later you spoke to the Mercers -- correct? --
 10 about the 2008 sweat lodge?
 11 A. After is a long concept. I do not know
 12 what you mean by after when.
 13 Q. Let me rephrase the question. Debby
 14 Mercer and Ted Mercer told you that people were not
 15 feeling well after the 2008 sweat lodge; correct?
 16 A. They did not.
 17 Q. They never told you that?
 18 A. They never told me that.
 19 Q. Let's talk about 2005. Actually, strike
 20 that.
 21 You've testified about the 2009 incident,
 22 and you were there at the end of sweat lodge;
 23 correct?
 24 A. I was.
 25 Q. And you saw the problems people were

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1 having as they came out of the sweat lodge?
 2 **A. I did.**
 3 **Q.** And people were in bad shape?
 4 **A. They were.**
 5 **Q.** Now -- and you tried to help people?
 6 **A. I did.**
 7 **Q.** Now, after the -- after emergency
 8 personnel had arrived, you eventually brought
 9 people into the Crystal Room in the Angel Valley --
 10 the Crystal Room, the large hall at Angel Valley?
 11 **A. After they went to their own rooms to**
 12 **shower and things, we asked them to come to the**
 13 **dining room.**
 14 **Q.** And that's the crystal --
 15 **A. No.**
 16 **Q.** I'm sorry. The dining room. You were
 17 trying to be -- at that point were you trying to
 18 help all of the folks who had gone through this?
 19 **A. Yes.**
 20 **Q.** And at that point a number of detectives
 21 came and talked to you? Do you remember that?
 22 **A. Yes.**
 23 **Q.** In fact, Sergeant Winslow spoke to you?
 24 **A. Yeah.**
 25 **Q.** And he asked you about what happened in
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1 the 2009 sweat lodge?
 2 **A. Yes.**
 3 **Q.** And he asked you if there had ever been
 4 any problems with Mr. Ray's sweat lodges before
 5 that evening. Do you remember that?
 6 **A. Yes.**
 7 **Q.** And you told him that you had, quote,
 8 "... had event from James Ray at the retreat in
 9 past years and had not had a problem of this type
 10 before." Do you recall that?
 11 **A. I may have said that. Yeah. I would**
 12 **rephrase that today. I would rephrase that that in**
 13 **2005 there was an incident.**
 14 **Q.** I understand. But your first statement
 15 to law enforcement on October 8, the night of the
 16 incident, was there had never been a problem before
 17 the 2009 sweat lodge like the problem that took
 18 place in 2009?
 19 **MS. POLK:** Counsel --
 20 **THE WITNESS:** That's totally correct.
 21 **MS. POLK:** Do you have a reference to --
 22 **MR. LI:** Yes. Sergeant Winslow's report,
 23 which Ms. Do can give you the Bates number.
 24 **MS. POLK:** It's in his report and not in a
 25 transcript?

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1 **MR. LI:** Your Honor, should I address the
 2 Court or should I address --
 3 **THE COURT:** Let's find out what we're use for
 4 impeachment, Mr. LI.
 5 What document do you have?
 6 **MR. LI:** It's a police report that reflects
 7 what the witness said. And I just asked her about
 8 it, and she said she said it.
 9 **THE COURT:** And Ms. Polk is entitled to see
 10 the document. The witness is not necessarily at
 11 the time of testifying. But Ms. Polk is entitled
 12 see a document that is being used for impeachment.
 13 So --
 14 **MR. LI:** I have not presented a document.
 15 **THE COURT:** You don't have to to the witness
 16 while testifying. But opposing counsel can see it.
 17 **MR. LI:** We can get the page number. But I'm
 18 moving on anyway.
 19 **MS. POLK:** Additionally, Judge, if I may be
 20 heard. Proper impeachment is confronting a witness
 21 with a statement that she has made. It's not
 22 proper to impeach a witness with a report written
 23 by a police officer that summarizes a statement.
 24 You can bring in that police officer, but
 25 to read a police report confronting a third party
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1 with what is written in the police report is not
 2 proper.
 3 **THE COURT:** Mr. LI, that is the normal
 4 procedure. If there is a statement that's made --
 5 if it's not consistent with what has been
 6 documented before or there is sometimes some other
 7 form of extrinsic evidence, then it can be brought
 8 out at that point.
 9 But -- so anyway, yes. Until I know the
 10 statement that's been made that's going to be
 11 possibly contradicted, that's the sequence of
 12 impeachment --
 13 **MR. LI:** Okay.
 14 **THE COURT:** -- in my view. Thank you.
 15 **Q.** BY MR. LI: Now, let's focus on
 16 Mr. Pfankuch in 2005. When you say there was a
 17 problem in the 2005 sweat lodge, you're really
 18 talking about Mr. Pfankuch; correct?
 19 **A. I am. I am.**
 20 **Q.** You're not talking about all the other
 21 sweat lodges and all the other participants who
 22 were there?
 23 **A. No.**
 24 **Q.** Now, you saw Mr. Pfankuch when he came
 25 out of the sweat lodge in 2005?

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1 **A. I did not see him come out because it was**
2 **dark and there were 40 people coming out.**

3 **Q.** Okay. And I'll rephrase it. You saw him
4 after he had come out of the 2005 sweat lodge?

5 **A. I did.**

6 **Q.** And, to your knowledge, he stayed in the
7 sweat lodge until the end?

8 **A. That is my understanding.**

9 **Q.** And when he came out of the lodge, he
10 came out under his own power?

11 **A. I have not seen him come out of the sweat**
12 **lodge. I only saw him afterwards among the people.**

13 **Q.** Okay. Your understanding -- what you saw
14 afterwards was that he was -- his body was moving
15 and he was able to physically function; correct?

16 **A. Yes. In an incoherent way. Yes.**

17 **Q.** And he was -- he had quote, unquote,
18 "lost it"?

19 **A. Yeah. That's a good way of putting it.**

20 **Q.** He was -- before I get to Dan Pfankuch,
21 for a second, if I could, you had mentioned how
22 people had come out of the lodge in a sort of a
23 tumble?

24 **A. A little bit. Yes.**

25 **Q.** And, essentially, all of them were trying
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1 to come out at once?

2 **A. From the outside looking in, that looked**
3 **like it.**

4 **Q.** So instead of coming out one at a time,
5 they were all rushing for the door at the same
6 time?

7 **A. That was the impression I had.**

8 **Q.** And it was a bit chaotic?

9 **A. That was chaotic.**

10 **Q.** And in the I midst of that Mr. Pfankuch
11 is -- you didn't see him come out, but he's out and
12 he's acting wild; correct?

13 **A. Yes. But again, I did not see him come**
14 **out of the sweat lodge.**

15 **Q.** I understand. And is he kicking and
16 throwing punches?

17 **A. Yeah.**

18 **Q.** And he's a big man, isn't he?

19 **A. He's a big, tall man.**

20 **Q.** And he's sort of doing martial arts type
21 of moves?

22 **A. I would not describe it as martial arts.**

23 **Q.** Okay. But he was kicking and hitting and
24 those sorts of things?

25 **A. He was waiving his arms around him. And**
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1 **he may have even touched people. Yes.**

2 **Q.** Okay. And some other participants
3 grabbed him and tried to prevent him from harming
4 other people?

5 **A. Yes.**

6 **Q.** And there was a relatively large struggle
7 with Mr. Pfankuch to sort of keep him from lashing
8 out?

9 **A. He was a strong man. And it was not so**
10 **much that people tried to avoid him to hit other**
11 **people. It was more to help him calm down.**

12 **Q.** To help him calm down. But it took a
13 number of people to control him?

14 **A. It did.**

15 **Q.** And he's a large man with a lot of
16 physical power?

17 **A. Yes.**

18 **Q.** And once the various participants had
19 gotten a hold of Mr. Pfankuch and brought him to
20 the ground, that's when he was -- that's how
21 Mr. Pfankuch ended up on the ground; is that
22 correct?

23 **A. I do not know that because when I was**
24 **leaving -- when I left the scene to go to James Ray**
25 **and call 911, he was still up. And when I came**

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1 **back, he was on the ground.**

2 **Q.** Okay. And while he was up -- now, I'm
3 going to preface this by saying I understand there
4 are spiritual dimensions to this. But I just want
5 to focus on physical. In terms of the physical,
6 Mr. Pfankuch's physical condition, he was not
7 unconscious in the sense that his eyes weren't
8 closed and he wasn't lying on the ground? He was
9 actually physically able to move; correct?

10 **A. He was physically able to move. But it**
11 **depends on what is the definition of being**
12 **"unconscious." For me it was unconscious. But if**
13 **the definition of "unconscious" means no movements,**
14 **no nothing, no. He was moving.**

15 **Q.** Okay. Now, have you described his
16 condition as having had an out-of-body experience?

17 **A. I have.**

18 **Q.** And is that how you would characterize it
19 today?

20 **A. I would characterize that today.**

21 **Q.** And he was totally somewhere else?

22 **A. He was.**

23 **Q.** And, essentially, your issue was that --
24 do you believe that Mr. Pfankuch's spirit was
25 leaving him and that he was getting lost?

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1 **A. If you are open to describe that beyond**
 2 **the strictly physical, that is how I saw it happen.**
 3 **His spirit was not connected with his body.**

4 Q. And that he was getting lost?

5 A. That is what then happens.

6 Q. And he could not find his way back to his
 7 body?

8 A. Yeah. And that can require guidance. It
 9 can happen by itself. It happens in similar
 10 situation when people are feverish or when people
 11 are on drugs. They can find it by themselves or
 12 they need help or they cannot find it back, and
 13 then they die.

14 Q. And your diagnosis of Mr. Pfankuch
 15 relates to his spiritual condition, that he was
 16 not -- that his physical self, his spirit, was not
 17 with his physical body and was getting lost?

18 A. My concern was if that is the case and
 19 the spirit cannot come back in the body, then he
 20 might have died.

21 Q. Right. I understand that. But before
 22 the might have died part, your main concern with
 23 Mr. Pfankuch was not a medical diagnosis per se.
 24 It was more concerned with his spiritual condition?

25 A. If the spiritual condition affects the
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1 **physical condition, then it becomes both.**

2 Q. And the main spiritual issue was that his
 3 spirit was unconnected to his body and was getting
 4 lost?

5 A. That was my observation.

6 Q. Now, you offer a number of services at
 7 Angel Valley, do you not?

8 A. I do.

9 Q. Including some spiritual services? Is
 10 that not correct?

11 A. We do.

12 Q. For example, you offer something called
 13 "channeled writing"?

14 A. I do.

15 Q. What is channeled writing?

16 A. It's connecting with realities that are
 17 not exactly of the physical.

18 Q. Receiving messages from spirits or the
 19 dead or beyond?

20 A. Yeah.

21 Q. And then you channel those and you write
 22 them down for people; is that correct?

23 A. And any person can do that.

24 Q. And do you charge for that?

25 A. For services I offer I charge. Yes.
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1 Q. Do you -- now, with respect to the other
 2 dimensions, these are people in the afterlife?

3 A. Could be.

4 Q. And they are also spirits amongst us?

5 A. Could be. Some call them angels. Some
 6 call them different beings.

7 Q. Angels, different beings. Are there
 8 other entities that you can communicate with
 9 through channeled writing?

10 A. It is -- in theory it's possible to
 11 connect with any kind of reality that is anywhere.
 12 Can we all do that? Potentially yes. Do we all do
 13 that? We do but not on an aware level always.

14 Q. And when you say any realities anywhere,
 15 you mean alternate universes and things like that?

16 A. You name it.

17 Q. And was Daniel Pfankuch perhaps in one of
 18 these alternate places at the time when he came out
 19 of the sweat lodge in 2005?

20 A. Wherever he was, he was not here.

21 Q. Do you think he might have been in one of
 22 other those other places?

23 A. He was somewhere out there. And I'm not
 24 the one who can know where he was.

25 Q. Now, another service you provide is
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1 called "healing with crystals" and "crystal
 2 skulls"; correct?

3 A. Yes.

4 Q. And this is a practice where you use
 5 crystal skulls to enhance your psychic ability; is
 6 that correct?

7 A. That is.

8 Q. And you also use the crystal skulls to
 9 aid you in channeling messages or information from
 10 other dimensions; correct?

11 A. Yes.

12 Q. And you also charge for those services;
 13 is that right?

14 A. Any service is part of my livelihood.
 15 Yes.

16 Q. Now, when Mr. Pfankuch was standing and
 17 waiving his body around but his spirit was
 18 somewhere else, that's when you decided to call
 19 911; correct?

20 A. Yes.

21 Q. Because you didn't know -- pardon me.
 22 Because you didn't know what to do with someone in
 23 that particular condition?

24 A. No. That was something I had not
 25 experienced before and I felt was beyond my

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1 **capacity to deal with it by myself.**
 2 Q. And Mr. Pfankuch, however, was conscious
 3 in that he could speak when the paramedics actually
 4 came; correct?
 5 A. **When they came, he still was not**
 6 **connected with our world here.**
 7 Q. But shortly thereafter he spoke to the
 8 paramedics, did he not?
 9 A. **Once -- shortly after when they had**
 10 **carried him into the ambulance, he came to.**
 11 Q. His body reconnected with his spirit?
 12 A. **That's how I would phrase it. Yes.**
 13 Q. And at that point he spoke to the
 14 paramedics, did he not?
 15 A. **He did.**
 16 Q. And he told the paramedics that he was
 17 fine and that he didn't need to go to the hospital?
 18 A. **Yes.**
 19 Q. And, in fact, you spoke to Mr. Pfankuch
 20 the very next morning; correct?
 21 A. **I did.**
 22 Q. And he told you that he had had a quote,
 23 unquote, "great experience"?
 24 A. **He did. That were his words.**
 25 Q. Now, other than Mr. Pfankuch's spirit
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1 leaving him, you didn't see any problems with
 2 Mr. Pfankuch like throwing up?
 3 A. **I did not.**
 4 Q. You didn't see him having problems with
 5 breathing?
 6 A. **He was very irregular in his breathing.**
 7 **But, again, I'm not a medical person. It was in**
 8 **the dark. His total condition for me was**
 9 **concerning.**
 10 Q. You didn't see him physically
 11 incapacitated, did you?
 12 A. **No.**
 13 Q. He was, in fact, quite strong in fighting
 14 with other -- not fighting but struggling with
 15 other participants?
 16 A. **His physical seemed not to be impacted.**
 17 Q. Just a few other questions about 2005. I
 18 think your testimony on direct with the state was
 19 that there were people who were outside that you
 20 were helping who were shivering in cold?
 21 A. **Yes.**
 22 Q. And you gave them blankets?
 23 A. **Yes.**
 24 Q. Now, when the paramedics came to get
 25 Mr. Pfankuch, they only -- they arrived at the
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1 scene of the sweat lodge; correct?
 2 A. **They did.**
 3 Q. And were there other people who had
 4 participated in the 2005 sweat lodge also there?
 5 A. **There were still a lot of people around**
 6 **there that had not left to their cabins yet.**
 7 Q. And the paramedics could have seen all
 8 the people who were there; correct?
 9 A. **They did.**
 10 Q. And they didn't take any of the other
 11 people to the hospital, did they?
 12 A. **They did not.**
 13 Q. And the next day Mr. Ray apologized for
 14 the incident?
 15 A. **He did.**
 16 Q. And he also apologized for yelling at
 17 you?
 18 A. **He did.**
 19 Q. Now, after the incident with
 20 Mr. Pfankuch, JRI, James Ray International,
 21 conducted a number of other sweat lodges at your
 22 facility; correct?
 23 A. **Yes.**
 24 Q. And they changed a lot of the procedures,
 25 didn't they?
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1 A. **They changed some procedures. Yes.**
 2 Q. They shortened the length of the Vision
 3 Quest in 2006? I think you testified to that --
 4 A. **They did not.**
 5 Q. When did they change the length?
 6 A. **The Vision Quest has always been the same**
 7 **length.**
 8 Q. The same length?
 9 A. **And I stated that before.**
 10 Q. I'm sorry. Then I misheard. They asked
 11 for -- from you for more fruit and drinks?
 12 A. **More. We already brought things out in**
 13 **2005.**
 14 Q. I understand. I'm just asking whether
 15 they asked for more.
 16 A. **Yes.**
 17 Q. They stationed volunteers outside of the
 18 sweat lodge?
 19 A. **Yes.**
 20 Q. They stationed volunteers inside of the
 21 sweat lodge?
 22 A. **In 2006 was the first year he brought, I**
 23 **think, two volunteers.**
 24 Q. Stationed inside the sweat lodge? They
 25 changed the policy so everybody had to leave in the
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1 same direction?
 2 **A. I don't know because I never was inside**
 3 **the sweat lodge. I do not know what measures were**
 4 **taken inside the lodge.**
 5 Q. Let me ask you this: In 2006 I think you
 6 testified earlier when people were leaving, they
 7 were leaving one at a time?
 8 **A. They came out more organized.**
 9 Q. And it wasn't a mad rush for the door?
 10 **A. Yes.**
 11 Q. They changed the sweat lodge ceremony
 12 from the evening where you couldn't see anybody
 13 when they came out to the daytime; correct?
 14 **A. Yes, they did.**
 15 Q. They added some tarps on the ground?
 16 **A. That was not in 2006. That was probably**
 17 **2008.**
 18 Q. And then electrolytes were added at some
 19 point?
 20 **A. Yes.**
 21 Q. When was that?
 22 **A. I would not be able to state it exactly.**
 23 **The drinks and the fruit that was provided in 2006**
 24 **was more elaborate than in 2005. And I think every**
 25 **year it was kind of a step up.**

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1 Q. Every year it became more elaborate?
 2 More fruit? More drinks?
 3 **A. Uh-huh.**
 4 Q. Now, there were hoses outside to help
 5 cool people down?
 6 **A. Yes. They did that in 2009. And I did**
 7 **not know what was the first year that they did**
 8 **that. They may have done that in 2008, but I'm not**
 9 **sure.**
 10 Q. I think they did in 2008. And in 2009
 11 they had a registered nurse who was a volunteer on
 12 the outside?
 13 **A. I heard later.**
 14 Q. And they also had a staff trained in CPR?
 15 **A. I didn't know about that, but I heard**
 16 **that later.**
 17 Q. Now, you had told us earlier today about
 18 a number of other sweat lodge ceremonies with other
 19 groups at your facilities?
 20 **A. Yes.**
 21 Q. Now, did any of those groups have a
 22 registered nurse stationed outside?
 23 **A. Never.**
 24 Q. Did any of those other groups have CPR
 25 trained staff?

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1 **A. Never.**
 2 Q. Did any of those other groups have
 3 volunteers inside the lodge?
 4 **A. Not that I was aware of.**
 5 Q. Did any of those groups have volunteers
 6 on the outside of the lodge?
 7 **A. Not that I was aware of. No. And there**
 8 **never was a need for that.**
 9 MR. LI: Move to strike, Your Honor.
 10 THE COURT: Sustained.
 11 Q. BY MR. LI: Now, in 2009, if we could
 12 focus for a second on the incident in 2009.
 13 Miss Neuman, Liz Neuman -- she did not go on the
 14 Vision Quest; correct?
 15 **A. She did not.**
 16 Q. And you didn't see everything that
 17 happened in the sweat lodge ceremony; correct?
 18 **A. Inside the sweat lodge ceremony I didn't**
 19 **see anything.**
 20 Q. Okay. You didn't see anything involving
 21 the sweat lodge ceremony until the sixth round; is
 22 that correct?
 23 **A. The only thing I could see was what**
 24 **happened outside of the sweat lodge, not inside.**
 25 Q. I apologize. Let me be more clear.

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1 Outside of the sweat lodge ceremony you didn't see
 2 anything until the later parts of the sweat lodge?
 3 **A. Yeah.**
 4 Q. And it was the same lodge from earlier,
 5 from 2008?
 6 **A. Same lodge.**
 7 Q. Now, Miss Bevins you testified, I
 8 believe, in connection with Ms. Polk's question
 9 about what was similar between 2005 and 2007, and
 10 you said Miss Bevins was similar to Mr. Pfankuch;
 11 correct?
 12 **A. Yes.**
 13 Q. And -- but Miss Bevins -- going back to
 14 Mr. Pfankuch for a second, he was awake but he
 15 couldn't speak to anybody; right?
 16 **A. He did speak but incoherent. And he did**
 17 **not hear us.**
 18 Q. Okay. Now, Miss Bevins, however, was
 19 talking to people?
 20 **A. She did not hear us either.**
 21 Q. She was calling for Mr. Ray?
 22 **A. Yes, she was.**
 23 Q. And she was talking to the other people
 24 around her; correct?
 25 **A. But the people said things back to her**

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1 **that she did not hear.**

2 **Q.** Do you think that she was also suffering
3 from a spiritual disconnection with her body?

4 **A. What I observed was a similar problem.**

5 **Q.** And my question to you is do you think
6 that she was experiencing a spiritual disconnection
7 from her body?

8 **A. That's what I thought.**

9 **Q.** Similar to Mr. Pfankuch --

10 **A. Similar to Mr. Pfankuch. Yes --**

11 **Q.** -- in 2005?

12 **A. Yes.**

13 MR. LI: Your Honor, I'm going to grab another
14 exhibit, Exhibit 80 and 47 in Your Honor's binder
15 book.

16 May I approach the witness, Your Honor?

17 THE COURT: You may. Yes.

18 **Q.** BY MR. LI: I'm placing before you -- or
19 I placed before you an 11-page document which is a
20 lawsuit in which the Angel Valley Ministries, Angel
21 Valley Spiritual Retreat Center, LLC, has sued
22 James Ray, Jane Doe Ray, James Ray International
23 and a number of other entities.

24 Are you familiar with this document?

25 **A. I'm familiar with the document.**

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1 **Q.** This is a complaint that you filed
2 against Mr. Ray; correct?

3 **A. It is.**

4 MR. LI: Your Honor, I'd move it into
5 evidence.

6 THE COURT: What's the number?

7 MR. LI: It is Exhibit 80, No. 47 in your
8 binder.

9 THE COURT: Okay.

10 MR. LI: Sorry for the double numbers.

11 THE COURT: Ms. Polk?

12 MS. POLK: I would request first that the
13 witness be allowed to see the exhibit to confirm
14 that it is, in fact, what she's been asked about.

15 THE COURT: She certainly can do that.

16 THE WITNESS: Yes. I'm aware of this.

17 MS. POLK: Judge, may I briefly voir dire the
18 witness?

19 THE COURT: You may.

20 VOIR DIRE EXAMINATION

21 BY MS. POLK:

22 **Q.** Mrs. Hamilton, is this the complaint that
23 was filed by Angel Valley, to the best of your
24 knowledge today?

25 **A. Yes.**

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1 **Q.** Is there more to the lawsuit than what is
2 in front of you?

3 **A. I was not prepared to talk about that**
4 **lawsuit. I thought that was a civil case that was**
5 **completely unrelated to what we are doing today**
6 **here. But --**

7 **Q.** Have more pleadings been filed in that
8 lawsuit?

9 **A. No.**

10 **Q.** In other words, was an answer filed by
11 JRI or James Ray?

12 **A. It's very recent. And there is -- I**
13 **think the answer that has been recently filed was**
14 **to dismiss it. That is the first reply that has**
15 **come from --**

16 **Q.** From James Ray or JRI?

17 **A. Yes.**

18 **Q.** And are you represented by an attorney in
19 this matter?

20 **A. Yes.**

21 **Q.** Is it the attorney who has prepared this
22 paperwork?

23 **A. Yes.**

24 **Q.** And the document that's in front of
25 you -- did you sign?

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1 **A. No. You see it is signed by the**
2 **attorney.**

3 **Q.** And when you say you were not prepared to
4 talk about this today, are you uncomfortable
5 talking about it?

6 **A. Yes. Because this is a situation that I**
7 **feel is playing between attorneys, between Mr. Li**
8 **and our attorney. And I am not aware that I was**
9 **going to testify anything that has to do with that**
10 **situation. I thought I was here as -- to be heard**
11 **as a witness in the criminal case against Mr. Ray.**

12 MS. POLK: Your Honor, I object to this
13 document. First of all, it's not a document signed
14 by Mrs. Hamilton. It is filed by an attorney on
15 behalf of Angel Valley Ministries, the nonprofit
16 corporation. She has indicated she has not signed
17 it.

18 Furthermore, she is represented by an
19 attorney in that matter and has expressed
20 discomfort with going ahead. The state was not
21 given any notice that these would be exhibits at
22 this hearing. And additionally I would object to
23 relevance.

24 THE COURT: Mr. Li, other than possible
25 relevance to bias, motive, that type of thing, any

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1 other relevance?

2 MR. LI: That's the relevance, Your Honor.

3 Listen. I'm just going to ask a number of
4 questions about the complaint, the actual complaint
5 itself. The fact is that she owns Angel Valley and
6 she's a defendant in a lawsuit and has filed
7 affidavits on behalf of her and her entities. And
8 she's suing on behalf of her and her entities
9 Mr. Ray. And these are relevant points to
10 influence her testimony. This is particularly so
11 since her original statements are different from
12 the statements today.

13 THE COURT: Ms. Polk?

14 MS. POLK: First of all, I object to the
15 mischaracterization or the argument. I don't agree
16 that her statements are different from her original
17 statements, different from the statements today.

18 But secondly, the state will stipulate
19 that Angel Valley Ministries, the nonprofit
20 corporation, and Angel Valley Spiritual Retreat
21 Center, an Arizona limited liability company, has
22 filed a lawsuit against James Ray and JRI. We will
23 stipulate to that.

24 But I think she is represented by an
25 attorney in that matter. It's a matter that

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1 appears to be pending. She's not comfortable
2 testifying about it. If the defense would accept
3 the stipulation that, in fact, there has been a
4 lawsuit filed by the nonprofit and the limited
5 liability, then we can move on.

6 MR. LI: Your Honor, I have about seven
7 questions for her about this. We did not call her
8 as a witness. The state called her as a witness.
9 And any suggestion that the fact that she is
10 represented by a lawyer really, in my humble
11 opinion, that issue lies with the state.

12 They called the witness who has ongoing
13 litigation. I don't know whether they've alerted
14 her counsel.

15 And, Your Honor, if we could handle one
16 question at a time, I think you will see that
17 they're not invasive into the attorney-client
18 relationship. I wouldn't do that.

19 THE COURT: I'm aware there is a complaint,
20 and it's been referenced -- the lawsuit has been
21 referenced now several times.

22 MR. LI: There is two different lawsuits. And
23 that's the point I'm making. One lawsuit in which
24 Mrs. Hamilton is a defendant and having been sued
25 by various of the participants and decedents -- the

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1 estates of the decedents at the sweat lodge.

2 This is a lawsuit brought by her entities
3 against Mr. Ray. And I think it's highly relevant
4 to judging her testimony in which she has said a
5 number of relatively disparaging things about
6 Mr. Ray. And I think that we should identify the
7 fact that her entities have filed a lawsuit and
8 they are seeking monetary damages. And I think
9 this is highly relevant to her credibility.

10 THE COURT: You can ask some questions about a
11 lawsuit being filed. And we will just proceed
12 question by question.

13 MR. LI: It will be very brief.

14 THE COURT: Ms. Polk, so you will have an
15 opportunity to object as the question is presented.
16 I really think I understand the -- I do understand
17 the point you're making. Really both lawsuits
18 raise several concerns.

19 MR. LI: I'll cut it to three questions.

20 THE COURT: The last one. And if there is an
21 objection.

22 CROSS-EXAMINATION (Continued)

23 BY MR. LI:

24 Q. In this lawsuit --

25 Thank you, Your Honor.

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1 In this lawsuit, Mrs. Hamilton, you've
2 sued for breach of contract indemnity, tort of
3 intentional exposure in civil litigation,
4 intentional interference with contractual
5 relations, intention interference with business
6 relationships; is that correct?

7 THE COURT: One thing I'll say. I have a rule
8 admitting the complaint. The complaint is relevant
9 and -- well, I don't know if we need to go further
10 than that.

11 Ms. Polk?

12 MS. POLK: Judge, again, the state will
13 stipulate that the lawsuit has been filed. We will
14 stipulate that she seeks monetary damage. But to
15 confront her with legal terms, a document written
16 by her attorney, not signed by her, I think is
17 improper and not necessary.

18 We will stipulate that the lawsuit's been
19 filed by the two -- the nonprofit and the limited
20 liability. She has not filed these lawsuit in her
21 personal capacity. And we will stipulate that the
22 lawsuits do seek monetary damage.

23 MR. LI: I'm --

24 THE COURT: I'm going to admit Exhibit 80.
25 It's going to be admitted.

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1 Mr. Li, I'm having trouble understanding
2 why you would need to inquire about the specific
3 legal terms.

4 MR. LI: That's all right. I'll move on from
5 that one. I'll focus on two questions.

6 Q. One, in this complaint you accuse Mr. Ray
7 of acting with a quote, unquote, "evil mind"?

8 MS. POLK: Judge, same objection. Language.

9 MR. LI: That's not a legal term. I'm sorry.
10 I apologize.

11 THE COURT: Go ahead, Ms. Polk.

12 MS. POLK: It's pulling language out of -- I'm
13 not even sure what paragraph it's referring to.

14 MR. LI: 21.

15 MS. POLK: Again, pulling language written by
16 the attorney in the context of the initial
17 complaint filed in a civil lawsuit, again, on
18 behalf of two legal entities -- the nonprofit and
19 the limited liability -- and not filed in her
20 personal capacity.

21 And, again, in light of the state's
22 stipulation, in light of this document having been
23 admitted by the Court, I think that the point has
24 been made and we should move on instead of trying
25 to confront her about specific language written by

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1 an attorney.

2 THE COURT: There is a claim for punitive
3 damages. So the lawyers here know why that's
4 there. Mr. Li, questions can be asked that might
5 show whether there is motive or bias. But to go
6 through the complaint and do that --

7 MR. LI: I won't. I'll ask one last question.

8 Q. Mrs. Hamilton, you're asking for monetary
9 damages, punitive damages, and attorneys' fees in
10 this lawsuit; correct?

11 A. **You've read the lawsuit. I am not --**

12 Q. I'm just asking.

13 A. **I cannot talk about this. This lawsuit
14 is put in attorneys' language, not my language.**

15 Q. Sorry. Are you asking for money?

16 A. **You and Mr. Ledbetter are talking about
17 this lawsuit.**

18 Q. Here's my question.

19 A. **And I'm not talking about this.**

20 Q. Ma'am, are you asking for money? Are you
21 suing James Ray for money?

22 A. **Have you read the lawsuit?**

23 Q. I'm asking you the question.

24 A. **I'm not going to answer the question.**

25 Sorry.

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1 MS. POLK: Your Honor, can I be heard on one
2 point?

3 THE COURT: Yes.

4 MS. POLK: I'm not sure who represents the --
5 Can I voir dire the witness?

6 THE COURT: Yes.

7 VOIR DIRE EXAMINATION

8 BY MS. POLK:

9 Q. Do you know who represents James Ray in
10 this civil lawsuit?

11 A. **It's here on the top.**

12 Q. Those are the attorneys that represent
13 you.

14 A. **Okay.**

15 Q. Do you know if Mr. Li represents --

16 MR. LI: I'll represent we don't.

17 THE WITNESS: No. It is against the insurance
18 company. And they are represented by -- I don't
19 have the name here right now. I can get you the
20 name.

21 MS. POLK: Judge, again, I request that we
22 move on.

23 THE COURT: The complaint has been admitted,
24 and it will be considered.

25 There isn't any further relevance that I
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1 see for purposes of this hearing, Mr. Li.

2 MR. LI: Okay, Your Honor. That's fine.

3 CROSS-EXAMINATION (Continued)

4 BY MR. LI:

5 Q. Now, Miss Hamilton, after the police came
6 to Angel Valley after the incident, they collected
7 a bunch of evidence; is that correct?

8 A. **They did.**

9 Q. They took samples from the tarps, maybe
10 one foot by one foot samples?

11 A. **I have not seen what pieces they cut.
12 They sampled everything they could.**

13 Q. They sampled some of the dirt?

14 A. **Anything they could think of could be of
15 any --**

16 Q. Did you see them?

17 A. **I saw them walk away with bags full of
18 material.**

19 Q. So you don't know whether or not they
20 sampled anything they could -- all you know is what
21 you saw; correct?

22 A. **All I know is what I saw.**

23 Q. So what you saw is they sampled -- they
24 carried away some bags; correct?

25 A. **Big bags.**

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- 1 Q. And they took some logs, correct?
- 2 A. Yes.
- 3 Q. And then after that, you decided that you
- 4 wanted to have a cleansing ceremony?
- 5 A. Yes.
- 6 Q. And in that cleansing ceremony you
- 7 decided that you wanted to burn the remaining wood;
- 8 correct?
- 9 A. No.
- 10 Q. Burn the remainders of the sweat lodge?
- 11 A. Of the sweat lodge, yes.
- 12 Q. And then take away all the other
- 13 materials that were associated with the 2009 sweat
- 14 lodge?
- 15 A. Yes.
- 16 Q. Including the rocks?
- 17 A. No.
- 18 Q. Where did the rocks go?
- 19 A. Are still there.
- 20 Q. Are all of the rocks --
- 21 A. All of them.
- 22 Q. Where did the wood go?
- 23 A. The wood -- that was burned.
- 24 Q. The remaining wood. There were wood
- 25 piles.

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- 1 A. The wood piles. The wood that was used
- 2 for the fire?
- 3 Q. Correct.
- 4 A. Was still there.
- 5 Q. Okay. And then you raked the ground;
- 6 correct?
- 7 A. Yes. We raked the ground.
- 8 Q. And you created a new space there with a
- 9 crystal -- or some crystals in the center?
- 10 A. We did.
- 11 Q. And before you raked the ground and
- 12 burned the pieces of the sweat lodge and did the
- 13 other things you did, did you have a conversation
- 14 with Detective Diskin?
- 15 A. We did.
- 16 Q. And did you tell him that you were going
- 17 to, essentially, destroy a lot of these objects?
- 18 A. No. I was not telling him that I was
- 19 going to destroy --
- 20 Q. That you were going to burn some of
- 21 the -- that you were going to have a cleansing
- 22 ceremony? Did you tell the detective --
- 23 A. We said we were going to take the sweat
- 24 lodge down to make sure that everything that they
- 25 needed for their investigation, that they had

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- 1 everything they needed. And they said yes. The
- 2 place is yours. And then we said tomorrow we will
- 3 do -- that was on Friday night. And then we said
- 4 tomorrow we will do a ceremony in which we will
- 5 take the sweat lodge down in the ceremonial way
- 6 with prayers, the way, in our understanding, it is
- 7 done traditionally. And we did that together with
- 8 a number of the participants who were still on the
- 9 property. That's what happened.
- 10 Q. And you did that with Detective Diskin's
- 11 permission?
- 12 A. Yes, we did.
- 13 MR. LI: If I may have a moment, Your Honor?
- 14 THE COURT: Yes.
- 15 MR. LI: I have nothing further, Your Honor.
- 16 THE COURT: Thank you, Mr. Li.
- 17 Ms. Polk?
- 18 MS. POLK: Thank you, Judge.
- 19 REDIRECT EXAMINATION
- 20 BY MS. POLK:
- 21 Q. Just a few questions, Miss Hamilton.
- 22 You were asked questions about who was responsible
- 23 for the willow branches, the logs, the stones, the
- 24 wood from the property. And you provided us with
- 25 some answers. Can you talk about -- is there a

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- 1 distinction in your mind between who is responsible
- 2 for the construction of the sweat lodge and the
- 3 ceremony itself?
- 4 MR. LI: Objection. Relevance.
- 5 THE COURT: Overruled.
- 6 Q. BY MS. POLK: That means you can answer.
- 7 THE COURT: You may answer.
- 8 THE WITNESS: Yes. I see there is a distinct
- 9 difference. Providing the material in a way that
- 10 is safe to be used and set up in a proper way and
- 11 ready to be used is one thing. And then it is up
- 12 to the person who does the ceremony whether a
- 13 ceremony is done safely, not to say right.
- 14 If I buy a new car and it can drive 150
- 15 miles an hour, it is still a safe car unless I do
- 16 not drive it properly.
- 17 Q. BY MS. POLK: Thank you. You were asked
- 18 questions about the lawsuits and the lawsuit that
- 19 your nonprofit and your limited liability filed
- 20 against James Ray. Did your business suffer as a
- 21 result of the deaths of the three victims on
- 22 October 8, 2009, at the spiritual -- at the Angel
- 23 Valley Center?
- 24 A. Yes.
- 25 Q. And in what way did your business suffer?

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1 MR. LI: Your Honor, objection. Relevance.
 2 THE COURT: Overruled.
 3 THE WITNESS: We had an increasing and
 4 expanding and growing business until the fall of
 5 2009. And after that we have distinctly less
 6 people who are connecting with us. And we feel it
 7 has directly to do with people who are afraid
 8 they're going to a place where there is not good
 9 reputation. It has definitely damaged our
 10 reputation.

11 And until everything is completed and
 12 finalized and there is more clarity into what has
 13 been our role -- are we part -- in what way we are
 14 part of it -- we expect that will continue for a
 15 little while.

16 Q. BY MS. POLK: Have fewer groups attempted
 17 to or asked to use your facilities, to rent your
 18 facilities?

19 A. Yes. Groups have asked. And those who
 20 have come have been very, very, very positive.
 21 It's just that the phone doesn't ring the way it
 22 used to. And we think people are holding back.

23 Q. Do you believe that James Ray improperly
 24 used your facilities?

25 A. Yes.

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1 Q. And in what way?

2 MR. LI: Objection, Your Honor. Relevance.
 3 This is not -- now we're talking about the actual
 4 civil lawsuit.

5 THE COURT: And I admitted that complaint,
 6 Exhibit 80, that you offered. I really don't think
 7 we need to talk a lot about this.

8 But you may answer that question.

9 THE WITNESS: There was no reason why a safe,
 10 beneficial, good ceremony could not have been
 11 performed. Instead, the ceremony was done in such
 12 a way that it ended in a disaster. And that could
 13 have been avoided.

14 Q. BY MS. POLK: You were asked about the
 15 events of October 8th after the police came and a
 16 meeting that occurred in the dining room at Angel
 17 Valley Center. You were present, and participants
 18 had been gathered in the dining room?

19 A. Yes.

20 Q. First of all, was James Ray there?

21 A. No.

22 Q. And where was he?

23 A. First he for quite a while --

24 MR. LI: Objection, Your Honor. Relevance.
 25 And privilege too. If I may?

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1 THE COURT: Yes. Go ahead, Mr. Li.

2 MR. LI: If I may approach at sidebar?

3 THE COURT: I can see the possible issues of
 4 privilege, Ms. Polk.

5 MS. POLK: Judge, I can move on.

6 THE COURT: Yes.

7 Q. BY MS. POLK: You were asked,
 8 Miss Hamilton, about -- actually, Mr. Li read from
 9 a police report created by one of the other
 10 detectives and read to you something that he
 11 suggested meant that you'd never had any other
 12 problems at the Angel Valley resort. In fact, had
 13 you never had a problem involving the death of
 14 participants in the sweat lodge before?

15 A. That's exactly the chaos. And people
 16 dying -- that has been something I have never
 17 experienced before nor expected.

18 Q. To your knowledge, did James Ray ever do
 19 any follow up to determine what medically had
 20 happened to Daniel Pfankuch?

21 A. No. Not that I am aware of. Neither did
 22 I know what happened to Daniel any further.

23 Q. And then you were asked some questions
 24 about comparing some of the things that JRI has put
 25 into place since the 2005 incident, such as

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1 training his staff CPR, the suggestion was made
 2 that there was a registered nurse stationed
 3 outside --

4 MR. LI: Objection, Your Honor. This is not a
 5 question.

6 THE COURT: If it's a preface to a question,
 7 Ms. Polk?

8 MS. POLK: It is a preface to a question.

9 THE COURT: Go ahead.

10 Q. BY MS. POLK: The suggestion was made
 11 that a registered nurse had been stationed outside
 12 in 2009. And you were asked whether or not those
 13 precautions had been taken with respect to nonJames
 14 Ray sweat lodge ceremonies. And you said no.

15 A. No.

16 Q. And can you explain why not.

17 A. Because I would not want situations that
 18 are taking place on the property that are death
 19 risky that that would be needed, in particular CPR
 20 training.

21 Q. And in your experience and in your
 22 opinion, the sweat lodge ceremonies conducted at
 23 Angel Valley Center -- should they be that risky?

24 MR. LI: Objection, Your Honor. With respect
 25 to the opinion, as long as it's her own personal

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1 opinion and it doesn't have anything to do with any
2 broader discussion of outdoor practices, what have
3 you, I won't have an objection.

4 THE COURT: That's the only way I would accept
5 that is just her personal opinion on that basis.

6 You may answer that.

7 THE WITNESS: Our policy is to not stretch
8 experiences to such a degree that those precautions
9 have to be taken other than if there is a
10 completely unforeseeable accident that could not be
11 taken care of by paramedics being called in.

12 We have never had the desire to have
13 situations like that. With James Ray that was
14 borderline, what was acceptable for what we want
15 to -- what we have in our philosophy to do at Angel
16 Valley.

17 Q. BY MS. POLK: And in what way was it
18 borderline?

19 A. **Having sweat lodges that are that intense**
20 **that -- like in 2005 we did have to call 911**
21 **because of something went wrong that could have**
22 **been avoided. That was on the edge of what we --**
23 **what was okay for us.**

24 Q. You were asked a little bit about 2008.
25 Is it your testimony that events occurred but

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1 you're not aware of them in 2008?

2 MR. LI: Objection, Your Honor. That's always
3 the case. There are always events occurring that
4 people are not aware of.

5 THE COURT: Ms. Polk, sustained as to the form
6 of that question.

7 MS. POLK: I'll reask it.

8 Q. In 2008 are you aware that there were
9 some problems with the sweat lodge ceremony
10 performed by James Ray?

11 A. **At the time I was not. In 2009 I was**
12 **not. Today I am.**

13 Q. And then finally, you described how after
14 the crime scene was cleared by the sheriff's office
15 that you performed a cleansing ceremony?

16 A. **We did.**

17 Q. Why did you do that?

18 A. **We wanted to remove the chaotic**
19 **environment that was there at that moment. We**
20 **wanted to clean up the land. We wanted to do**
21 **energetic clearing. That may not speak to just**
22 **anybody, but for us it was important because it was**
23 **a lot of trauma energy in the air.**

24 **We needed to clear that for ourselves.**
25 **We were ourselves heavily traumatized, and we**

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1 **needed to clear that for people who would come in.**
2 **We would have people coming in very shortly. It's**
3 **a spiritual place, but it's also a business. So we**
4 **had to clean for the next people who would come in.**
5 **And that's what we did.**

6 **And we likened it to when there is a**
7 **traffic accident. After everything has been**
8 **investigated, the car wreck is removed. Why would**
9 **people leave it there for the next two years?**

10 Q. How did you -- did you seek out help in
11 determining what kinds of cleansing ceremony to
12 perform?

13 A. **We did. We asked first and foremost for**
14 **help personal. Because for us we were devastated**
15 **ourselves. But we had to act at the same time. So**
16 **we could not sit down with our feeling miserable,**
17 **feeling upset. We had to take action.**

18 Q. The stones that are used inside the sweat
19 lodge ceremony -- is there another name for them?

20 A. **In the traditional they call them**
21 **"grandfathers" and in the traditional Native**
22 **American way, James Ray did take that part out of**
23 **the Native American tradition. He called them**
24 **"grandfathers" too.**

25 Q. Did you do something with those
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1 grandfathers or those stones that are still at the
2 scene today?

3 A. **The stones that were inside that**
4 **particular ceremony -- we took them outside of that**
5 **pit. They formed the shape of a heart, and that**
6 **heart is still there.**

7 Q. Thank you, Miss Hamilton.
8 Thank you, Judge.

9 THE COURT: Thank you. May Miss Hamilton be
10 excused as a witness in this proceeding, Counsel?

11 MS. POLK: Yes, Your Honor.

12 MR. LI: Yes, Your Honor.

13 THE COURT: Okay.

14 Miss Hamilton, you are excused as a
15 witness in this proceedings. The rule of exclusion
16 I've explained to you. That applies throughout
17 this hearing. It appears that will be going into
18 tomorrow as well. So it applies throughout the
19 hearing. All right?

20 Thank you. You are excused at this time.
21 State's next witness.

22 MS. POLK: State calls Ted Mercer, please.

23 THE COURT: Stand where the bailiff directs
24 you, raise your right hand and be sworn by the
25 clerk.

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1 THEODORE M. MERCER,
2 having been first duly sworn upon his oath to tell
3 the truth, the whole truth, and nothing but the
4 truth, testified as follows:

5 THE COURT: Please be seated here at the
6 witness stand.

7 Would you please begin by stating and
8 spelling your full name.

9 THE WITNESS: Theodore Martin Mercer;
10 T-h-e-o-d-o-r-e, M-a-r-t -- M-a-r-t-i-n,
11 M-e-r-c-e-r.

12 THE COURT: Ms. Polk?

13 MS. POLK: Thank you.

14 DIRECT EXAMINATION

15 BY MS. POLK:

16 Q. Good afternoon, Mr. Mercer.

17 A. Hi. How are you?

18 Q. And thank you. Mr. Mercer, do you -- you
19 are a resident of the Verde Valley area; is that
20 correct?

21 A. That's correct.

22 Q. And in 2007 you had some involvement at a
23 place called "Angel Valley Retreat Center"?

24 A. That's right.

25 Q. How did you learn of Angel Valley Retreat
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1 Center?

2 A. On line. We were coming up to angel --
3 we were coming up to the Sedona area and looking
4 around and just exploring the Sedona area. And my
5 wife had found it on line. So we went down there
6 and started exploring down there.

7 Q. Was that in 2007?

8 A. I'm thinking it might have been in 2006,
9 maybe early 2007.

10 Q. In 2007 did you develop a relationship
11 with the owners of the Angel Valley Retreat Center?

12 A. Yes, we did.

13 Q. And in 2007 did you ultimately volunteer
14 in connection with a sweat lodge ceremony that was
15 being conducted there?

16 A. Yes.

17 Q. And why was it that you volunteered for
18 that ceremony?

19 A. Well, we've been going up to Angel Valley
20 quite a bit and volunteering with doing some
21 landscaping work and just helping around the area.
22 And that volunteering actually turned into more
23 work, actually, more volunteering, because they
24 kept asking us to come back. And so it was just
25 part of what we were doing there at the time.

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1 Q. Prior to the sweat lodge ceremony in
2 2007, had you ever done a sweat lodge ceremony
3 yourself?

4 A. No. Never even heard of it before.

5 Q. So you've never been on the outside or
6 the inside of one before that?

7 A. No.

8 Q. Were you in charge of the sweat lodge in
9 2007?

10 A. I wasn't in charge of it. I was one of
11 the fire keepers.

12 Q. Will you explain to the Court the rule of
13 the fire keeper.

14 A. Well, the fire keeper is the person who
15 takes care of the rocks before they go in. So what
16 we do is we gather up all of the lava rocks. We
17 get them in a pile. We put them in the fire pit.
18 We pile a bunch of wood over the fire pit and we
19 start the fire. We just make sure the rocks are
20 always covered and there is always a good fire
21 going before and during the sweat lodge.

22 Q. Who would you say was in charge of not
23 the sweat lodge ceremony but just the sweat lodge
24 and the fire in 2007?

25 A. His name was Gary Palisch. He was the
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1 door keeper. That's who is usually in charge of
2 the fire.

3 Q. Had you met James Ray before 2007?

4 A. Oh, no.

5 Q. Did you meet him in 2007?

6 A. No. Not officially. We didn't meet.
7 No. He tried to back his car up one time, and our
8 golf cart was in the way. He got out of his car
9 and asked us to move the golf cart. That was the
10 only interaction I had, at least prior to this last
11 one.

12 Q. I think you testified that the sweat
13 lodge ceremony conducted by James Ray in 2007 was
14 your first?

15 A. Yes.

16 Q. Did you know what to expect?

17 A. I had no idea.

18 Q. Describe for the Court just generally
19 what you observed in 2007.

20 A. Well, we -- just what I observed of the
21 sweat lodge or what do you want to know? More
22 about how it was built and everything or just what
23 we observed?

24 Q. Did you participate in the building of
25 the sweat lodge?

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1 A. Yes.

2 Q. Thank you. Let me back up a little bit.

3 A. Okay.

4 Q. Mr. Mercer, I'm going to show you

5 exhibits 16, 17, 18, 19, 20 and 21. Will you just

6 take a moment to look at those, please.

7 A. Okay.

8 Q. Do you recognize all those photographs?

9 A. I certainly do.

10 Q. I'm going to put up on the overhead

11 Exhibit 17, which has already been admitted.

12 Are you in this photograph?

13 A. Not that one I'm not.

14 Q. You talked a little bit about the

15 construction. Were you involved in the

16 construction in 2007?

17 A. Well, see, now that sweat lodge there was

18 not the sweat lodge we used in 2007. That's a new

19 kiva that we built specifically for James Ray.

20 Q. So these are actually 2008?

21 A. Yeah. They were for the 2009 sweat

22 lodge.

23 Q. Okay. So let's talk about 2007 before we

24 look at the photographs from 2008 and 2009.

25 A. Okay.

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1 Q. The construction of the sweat lodge,

2 then, you participated in under somebody else's

3 direction?

4 A. That's correct.

5 Q. And then later when the sweat lodge

6 ceremony was conducted, you were present?

7 A. Yes.

8 Q. And you were helping tend the fire?

9 A. Yes.

10 Q. At some point did people start coming out

11 of the sweat lodge that appeared to be sick to you?

12 A. Yes.

13 Q. Tell The Court what you first observed in

14 terms of people being in distress.

15 A. Well, when they first started -- when the

16 people first came to the sweat lodge, they all got

17 in a line and they all got inside the sweat lodge.

18 They all crawled in and got in their spot. We

19 brought in a bunch of rocks. I can't say exactly

20 how many the first time.

21 But we brought in a bunch of rocks. And

22 the door closes, put some water on it. And then

23 the steam builds. And then after about -- you

24 know -- 15, 20 minutes they open the door. And

25 every time they open the door, some people would

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1 come out.

2 The first round I wouldn't say there was

3 anybody in real distress. But they were awfully

4 heated up and needed to get out and cool down a

5 bit.

6 But the second round I do remember there

7 was one girl in particular that she crawled to the

8 door and landed flat on her face. And she was

9 actually passed out. This is the first time I've

10 ever had to pull everybody out. When we rolled her

11 over, her eyes rolled up to the back of her head,

12 and we pulled her out of the door of the sweat

13 lodge and put her aside. And then we have to go

14 back to tending the fire.

15 And then James Ray's Dream Team were

16 taking care of the people over there. As it

17 progressed, more and more people came out. The

18 third or fourth round another handful of people or

19 so came out. And they were -- you know -- they

20 were overheated. Some of them were crawling out

21 and couldn't -- you know -- couldn't stand up and

22 crawled out of the sweat lodge to where we had a

23 bunch of tarps put up so they could get hosed down

24 and cooled off.

25 As the sweat lodge went on -- you know --

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1 more people kept on coming out and less and less

2 would go back in. And every round they opened up,

3 more people would come out. And by the time it was

4 done at least half of the people were out, as far

5 as I can remember.

6 Q. Who tended to the people who came out?

7 A. Mostly the first sweat lodge was the

8 James Ray people that were around. Because we were

9 told to take care of the fire, and those people

10 were going to be okay. So don't worry about them.

11 Our focus was on the fire.

12 Q. Why was it, then, that you helped drag

13 the lady who had fallen down?

14 A. Because I was right at the door. And --

15 you know -- the fire tender -- when the door opens,

16 we have to be attentive to the people who come in

17 and out. And sometimes the person who is running

18 the sweat lodge wants water or wants something from

19 us. So we have to be there to give him what he

20 needs. So I just happened to be there when she

21 came out.

22 Q. By the time the sweat lodge ceremony

23 ended in 2007, do you recall how many people were

24 still inside approximately?

25 A. Probably around half, maybe less than

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1 half.

2 Q. Do you recall whether or not there was
3 any pressure put on those who had come out in 2007
4 to go back into the ceremony?

5 MR. LI: Objection. Foundation.

6 THE COURT: Sustained.

7 Q. BY MS. POLK: Let me reask you that
8 question. With respect to the people who came out
9 in 2007, did you hear anybody belonging to the
10 James Ray team -- either James Ray or his team --
11 put any pressure on them to get back into the sweat
12 lodge?

13 A. Every time the door opened, before they
14 were about to close it they asked if anybody wanted
15 to come in. And so the James Ray people would go
16 around and ask them if you want to come. You want
17 to go in? And they would say no or yes.

18 So if they said yes, they'd help them
19 back to the door. And if they said no that first
20 year, no, there wasn't that much pressure put on
21 them. It seemed like it was okay to be in or out
22 and it was your comfortable -- your comfort level.

23 Q. And in 2007 with respect to the people
24 who came out, to your knowledge, was any medical
25 care given to them?

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1 A. No.

2 Q. Did you see anything that concerned you
3 personally about their medical state?

4 A. Yes. I was completely shocked through
5 the whole thing. I mean, I've never seen a sweat
6 lodge before so I didn't know what to expect. When
7 people are coming out and they're eyes are up in
8 their head -- I mean, their eyes are rolled up in
9 the back of their head. You know, I didn't know
10 what to think.

11 And then there was two ladies that I
12 remember in particular that after the sweat lodge
13 was over, they had no idea what their names were or
14 what day it was or what the year was or anything
15 for at least two and a half hours after the sweat
16 lodge. And then I went home and went to bed after
17 that. And the next day I saw them, and they seemed
18 to be fine.

19 But yeah. They were very incoherent.
20 And I talked to both of them -- you know -- over
21 half an hour each just to help them see if I could
22 help them get their memory back. But it didn't
23 seem to do anything. They were just completely
24 spaced out.

25 Q. Were you expected by James Ray or Angel

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1 Valley to try to assist the participants from the
2 2007 sweat lodge?

3 A. No.

4 Q. And why did you engage yourself in
5 particular with those two women?

6 A. Because I just felt bad for them -- you
7 know. I was there and I felt like I needed to do
8 something. So I did what I could.

9 Q. Did you notice whether James Ray or his
10 staff was doing anything for the participants in
11 2007?

12 A. Yes. Not James Ray himself, but the
13 staff was there and they were assisting people.
14 They were very -- they were there assisting people.
15 Yeah.

16 Q. Were they doing what you were doing or
17 something different?

18 A. No. They were pretty much doing what I
19 was doing. There was just a lot of people around
20 that needed help. So I went to the people that --
21 you know -- might not have had a James Ray person
22 there but one of the participants might have been
23 there with him. You know. Like, the roommate was
24 with them or something.

25 So I went and talked to them for a while.

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1 You know, you kind of make a little bond with these
2 people after working with them a little while. You
3 care about them so you want to see them be okay.
4 So you do whatever you can.

5 Q. Okay. Let's talk about 2008 now and
6 Exhibit 16 that's up on the overhead. In 2008 a
7 new sweat lodge was constructed on the property of
8 Angel Valley?

9 A. After the 2008 sweat lodge, yes. Because
10 that was just -- as far as I remember, it was just
11 for the 2009 sweat lodge.

12 Q. Do you recall if the lodge was put up --
13 a new lodge was put up in 2008 as well?

14 A. No.

15 Q. Did you participate in resurrecting or
16 constructing the lodge in 2008?

17 A. Yes.

18 Q. Who was in charge of the construction in
19 2008?

20 A. Of building that lodge or just --

21 Q. I'm sorry. Yes. For constructing the
22 sweat lodge.

23 A. Well, Michael Hamilton told us that we
24 needed to build a new sweat lodge. So Gary Palisch
25 was the general manager at the time. And he put in

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1 charge a man called David Singing Bear. And he
2 came in with his nephew and told us exactly how
3 many sticks to get. Because we go up and get the
4 willow sticks and we dry them out a little bit, and
5 we dig the holes, and we build it.

6 So he told us exactly how many holes to
7 put in and how many sticks to get and how to
8 construct the lodge. So myself, my wife, a woman
9 named Anita and another guy named Brian put it
10 together underneath David Singing Bear's
11 instructions.

12 Q. Okay.

13 A. And that was just the kiva. That wasn't
14 covering it or anything. That was just the
15 branches.

16 Q. When you say "kiva" --

17 A. The kiva is the structure that you see
18 being built there. And it isn't actually a sweat
19 lodge until you cover it with blankets and stuff.

20 Q. And in 2008 after the sweat lodge had
21 been constructed, what was your role when James Ray
22 performed his ceremony then?

23 A. I was the fire keeper on that one.

24 Q. Once that ceremony began, did after a
25 round or so -- I'm talking about 2008 now. Did

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1 people start coming out like they had in 2007?

2 A. Yeah. It was, basically, the same thing.
3 The first round people came out because they were
4 just too hot. And most of the people didn't go
5 back in. It seems like the first round people just
6 decided they don't like it or not so they come out.

7 And then yeah. The second round more
8 people started coming out, more people in distress.
9 We had tarps out and hoses where the James Ray
10 people would be hosing them down to cool them off.

11 And it was, basically, the same. It was
12 chaos through the whole thing, basically. People
13 come out and they're -- we have to drag them away
14 from the door because they're throwing up or
15 they're -- you know -- they're incoherent. By the
16 time they hit that cold air again, it shocks them a
17 bit too.

18 So we're pulling them out and taking them
19 to the tarps and the same procedures were
20 happening -- you know. They were hosing them down
21 and trying to get them back to sitting in chairs
22 and back in the sweat lodge if they could. But it
23 was, basically, the same thing.

24 Q. Did you see things that concerned you in
25 2008?

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1 A. Yes, I did. There was a Japanese woman
2 that went into convulsions. Her whole body -- her
3 muscles tensed up. So she couldn't even move them.
4 They were locked like this. And there happened to
5 be a doctor there. This guy said he was a doctor.
6 He carried her off to the showers. And I was there
7 with her until she got to the shower. And then I
8 went back to the sweat lodge.

9 And then again there was two or three
10 ladies that didn't know their name. They didn't
11 know where they were or what year it was or what
12 was going on until the next day.

13 Q. About how many people would you say in
14 2008 you saw in medical distress?

15 A. 20, 25 people.

16 Q. And by the time that ceremony was
17 entering its last round, how many people would you
18 say were still inside the sweat lodge in 2008?

19 A. A little less than half.

20 Q. And the same question I asked you
21 earlier. Did you hear whether James Ray or his
22 staff encouraged people who were outside to come
23 back in the sweat lodge?

24 A. They always encouraged them to come back
25 in. You know, they encouraged them to come back in

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1 and -- you know -- they wanted them back in because
2 that was all a part of the sweat lodge.

3 And -- but I don't know if they were
4 pushing them to get back in like they did the year
5 after that. But yeah. There was encouragement.
6 They would say come on. Let's go back in. Let's
7 do the sweat lodge. And you're learning something
8 or you're growing somehow. So yeah.

9 Q. And you just made reference to the year
10 after that. Are you referring to 2009?

11 A. Yeah.

12 Q. You were present also when James Ray
13 performed the sweat lodge ceremony in 2009?

14 A. That's correct.

15 Q. And was there a difference, then, that
16 you were just referring to between the
17 encouragement to get back into the sweat lodge
18 between '07, '08 and then what happened in 2009?

19 MR. LI: Objection. Lack of foundation.

20 THE COURT: Sustained, Ms. Polk. His basis
21 and knowledge.

22 MS. POLK: Okay.

23 Q. In 2009 -- I'm going to put up on the
24 overhead, Mr. Mercer, Exhibit 21.

25 I'm sorry, Your Honor. Exhibit 21 has
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1 not been admitted. I move for its admission.

2 MR. LI: No objection.

3 THE COURT: Exhibit 21 is admitted.

4 (Exhibit 21 admitted.)

5 Q. BY MS. POLK: I'm going to put Exhibit 21
6 and just have you tell the Court -- I believe this
7 is actually 2008. I believe this is a photograph
8 taken by your wife in 2008. I could be wrong. But
9 do you recognize this as the sweat lodge ceremony
10 or the sweat lodge used either in 2008 or 2009?

11 A. Yes.

12 Q. Which one do you think it is?

13 A. I'm thinking it's the 2009 just because
14 of the wood that we were using.

15 Q. Okay. Could you describe for the
16 Court -- we've gone from the -- I think you called
17 it a kiva shown in Exhibit 16?

18 A. Uh-huh.

19 Q. How do we get from that frame to what we
20 see in Exhibit 21?

21 A. Well, the last picture that you had up
22 didn't have all of the frame up yet. So that was
23 just the beginning of the frame. So as you can see
24 here, that the frame had gotten finished. And what
25 we do is we get a whole bunch of blankets and we

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1 lay it over the top of the frame.

2 Q. I'm going to put Exhibit 8.

3 A. There you go. That's the finished kiva
4 there. So what we do is we get blankets and start
5 at the top, and we start draping them down all the
6 way down to the sides until it hits the ground.
7 And then we overlap it on the ground about an inch
8 or two or more -- a foot I guess I would say.

9 And then after we get it all covered with
10 the blankets, we get the tarps and we put the tarps
11 on top. And the after the tarps --

12 Q. I'm going to go back to Exhibit 21.

13 A. Yes. And then that's covered with all
14 the tarps, the blankets, the tarps. And then there
15 was this special rubber membrane or this special
16 rubber thing that Michael had made specially for
17 the sweat lodges that we put over the top of the
18 whole thing just in case the wind picks up or
19 something to seal it really good. And then we put
20 the rocks around the side to seal the edges so no
21 air gets in and out of there. And then I have to
22 make that door. I made it out of some real heavy
23 blankets and sleeping bags.

24 MS. POLK: Your Honor, I move for the
25 admission of Exhibit 19.

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1 MR. LI: No objection.

2 THE COURT: 19 is admitted.

3 (Exhibit 19 admitted.)

4 Q. BY MS. POLK: I'm going to put 19 up on
5 the overhead, Mr. Mercer. What does that show us?

6 A. That's the inside of the sweat lodge. My
7 wife and my dog are in there. And the hole in the
8 middle is where the rocks go into when they get
9 heated up.

10 And that I think is the done sweat lodge.
11 It's ready to go except for I think we still had to
12 put some tarps on that because you can kind of see
13 through here. On the left side you can see through
14 the light there. And after we had put it up, it's
15 pretty dark. If we put the top down you wouldn't
16 be able to see anything.

17 Q. Okay. In 2009, then, you're the fire
18 tender for the sweat lodge ceremony performed by
19 James Ray?

20 A. Yes.

21 Q. And were you there from the beginning to
22 the end?

23 A. Yes.

24 Q. At some point were you aware that there
25 were some problems with respect to the medical

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1 condition of the participants?

2 A. Well, yes. Right from the beginning
3 people started coming out just like before. And
4 I'm not a doctor --

5 MR. LI: Your Honor, move to strike. This is
6 a narrative.

7 THE COURT: There was a yes or no question
8 originally posed.

9 It is my practice to take a recesses at
10 90 minutes, Counsel. We're right about there.

11 Sustaining the objection. And we will
12 resume at five after 3:00. Thank you.

13 I need to tell the witness.

14 Mr. Mercer, the rule of exclusion of
15 witnesses has been invoked in this hearing. That
16 means you cannot talk about your testimony or the
17 case with any other witness in this hearing until
18 the hearing is completely over. You can talk to
19 the lawyers but you can't talk to other witnesses
20 until this hearing is over.

21 Okay?

22 THE WITNESS: Okay. So my wife is there. I
23 can't go talk to her?

24 THE COURT: Not about the case.

25 THE WITNESS: I understand.

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1 THE COURT: You need to be careful while the
2 hearing is in progress here. So keep that in mind.
3 Do not talk to any other witness about the case in
4 any fashion until this hearing is complete.

5 THE WITNESS: I can do that.
6 (Recess.)

7 THE COURT: Record will show the attorneys are
8 all present. The witness, Mr. Mercer, has resumed
9 the witness stand. He is still under oath, of
10 course.

11 Ms. Polk is conducting direct examination
12 and asked a question before the break having to do
13 with whether or not Mr. Mercer had observed medical
14 problems or something to that effect. I had
15 sustained the objection. Although I think
16 Mr. Mercer was qualifying by indicating he's not a
17 doctor.

18 But, in any event, please resume,
19 Ms. Polk.

20 MS. POLK: Thank you. And, Your Honor, I want
21 to back up a little bit and move for the admission
22 of exhibits 19, 20, 22 and 24.

23 MS. POLK: No objection, Your Honor.

24 THE COURT: Okay. 19, 20, 22 and 24 are
25 admitted.

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1 (Exhibits 20, 22 and 24 admitted.)

2 Q. BY MS. POLK: And, Mr. Mercer, I want to
3 show you again some of these exhibits, Exhibit 16,
4 17, 18, 19, 20, and 21, which show the construction
5 of one of the sweat lodges. And there was some
6 confusion, I believe, in your mind as to whether
7 this was 2008 or 2009?

8 A. Yeah. I think after the 2008 James Ray
9 sweat lodge we built a new kiva for the 2009 sweat
10 lodge.

11 Q. Okay. And this could -- or perhaps is
12 2008? Could be 2008, 2009, the construction?

13 A. Yes.

14 Q. Okay. And then talking specifically
15 about 2008, you talked about people in distress?

16 A. That's correct.

17 Q. Now I'm going to show you exhibits 22, 23
18 and 24. Do you recognize these exhibits?

19 A. Yes.

20 Q. Let me put them up on the overhead.
21 Starting with Exhibit 22 that I put on the
22 overhead, what year do you recognize this to be a
23 photograph from?

24 A. I would think that's a 2008 sweat lodge.

25 Q. Why do you recognize it as a --

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1 A. The girl in the purple shirt was present
2 in the 2008 sweat lodge.

3 Q. Let me show you now Exhibit 23. Do you
4 recognize that also to be 2008?

5 A. Yeah. I think so. It's because in 2009
6 we had put down tarps on the ground so everybody
7 wouldn't have to be laying on the dirt.

8 Q. When you testified about people in
9 distress in 2008, do you see in this photograph
10 illustrations of what you saw in 2008?

11 A. Yes.

12 Q. Specifically --

13 MR. LI: Objection, Your Honor. Foundation.

14 THE COURT: I didn't hear the rest of the
15 question.

16 Complete the question, please.

17 MS. POLK: I'm asking the witness what he sees
18 in this photograph that illustrates the medical
19 distress that he testified to in 2008.

20 MR. LI: Assumes facts not in evidence, Your
21 Honor.

22 THE COURT: In what sense, Mr. Li?

23 MR. LI: Medical distress is a technical term.

24 THE COURT: I mentioned before I think
25 Mr. Mercer was indicating he's not a -- doesn't

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1 have medical training or is not a doctor, something
2 to that effect. So it has to do with Ms. Polk
3 referring to these as medical issues.

4 Sustained on that very technical grounds,
5 Ms. Polk.

6 MS. POLK: I can use a different term, Your
7 Honor.

8 Q. Mr. Mercer looking at Exhibit 23, do you
9 see -- can you tell the Court if this illustrates
10 what you saw in 2008 in terms of people being in
11 some form of distress?

12 A. Yes.

13 Q. And tell the Court specifically what you
14 see in this photograph.

15 A. Well, some of the people that are laying
16 on the ground aren't just laying on the ground
17 because they're tired. I can remember some of
18 these people, especially this person in the blue
19 shirt there.

20 MR. LI: Objection, Your Honor. I'm going to
21 move to strike this. The picture speaks for
22 itself. And the witness is offering various
23 opinions about what he thinks the physical and
24 medical condition of all the people in the picture.

25 THE COURT: I'm going to accept this as just a

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1 lay person's observation. So overruled. I didn't
2 know who he was referring to in the picture being.

3 **Q.** BY MS. POLK: I'm going to show you,
4 Mr. Mercer, something cool about this technology.
5 You can actually press on the screen, and everybody
6 can see what you're referring to, pointing to press
7 on the screen where you need to point.

8 **A.** Well, this person here -- she was -- she
9 was one that had been dragged out of the sweat
10 lodge and was passed out when we took her out. I
11 can remember that. And other than that, the
12 picture isn't the best so I can't really tell who
13 the other people are.

14 **Q.** I'm going to put up on the screen
15 Exhibit 24.

16 **THE COURT:** Just a technical point. This is
17 Exhibit 23 that's up there. And technically it
18 hasn't been admitted.

19 Any objection?

20 **MR. LI:** No, Your Honor.

21 **THE COURT:** 23 is admitted.

22 (Exhibit 23 admitted.)

23 **MS. POLK:** I'm sorry, Your Honor. I move to
24 admit exhibits if they've not been admitted
25 already.

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1 **THE COURT:** 19, 20, 22, 23 and 24 now are
2 admitted.

3 **MS. POLK:** They're all admitted, then.

4 **Q.** I'm going to put up on the screen,
5 Mr. Mercer, Exhibit 24. Do you recognize anything
6 from this photograph?

7 **MR. LI:** Objection as to the form of the
8 question.

9 **THE COURT:** Sustained.

10 **Q.** BY MS. POLK: Mr. Mercer, looking at
11 Exhibit 24, do you see people in this exhibit that
12 you recall from 2008 believing that they were in
13 some form of distress?

14 **A.** Well, with my experience with the sweat
15 lodges, most people when they come out, they don't
16 need to be dragged off to the side and hosed down
17 and put blankets on to cool down. Most of them get
18 up and walk out through the door after they get
19 there, and most of these people we had to pull away
20 from the door.

21 There was a bunch of us taking people and
22 just dragging them away from the door because there
23 was a bunch of them coming behind them.

24 **MR. LI:** Objection, Your Honor.

25 Nonresponsive.

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1 **THE COURT:** I'm going to let the answer stand
2 as far as it's proceeded. It originally did start
3 with a yes or no, the question that called for a
4 yes or no response.

5 **Ms. Polk,** please ask another question.

6 **Q.** BY MS. POLK: With respect, Mr. Mercer,
7 to the people you had to drag from the door, where
8 did you take them?

9 **A.** We took them over to the right side of
10 the sweat lodge, over where the water was, and
11 tried to get them -- you know -- away from the
12 front of the sweat lodge and away from the fire so
13 they'd have a chance to cool down.

14 **Q.** In 2008 who was tending to those people
15 who had to be dragged out from the sweat lodge?

16 **A.** Just about anybody that was outside. The
17 James Ray people were helping because there was a
18 group of them that were outside of the sweat lodge
19 the whole time. And myself and my family were
20 helping. And then a lot of the participants --
21 some of the participants were helping other
22 participants.

23 So it was like kind of a group effort --
24 you know. When something like that goes bad, then
25 everybody chips in to do what they can.

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1 **Q.** Did you see differences between the
2 ceremony and the participants from 2007 to --
3 between 2007 and 2008 in terms of the scene
4 afterwards when it was over?

5 **A.** No. It was pretty much the same.

6 **Q.** Did you see any improvement or less chaos
7 in 2008 than you had seen in 2007?

8 **MR. LI:** Objection as to form. I don't
9 believe he's ever said chaos.

10 **THE COURT:** The question is about improvement.

11 You may answer that if you can,
12 Mr. Mercer.

13 **THE WITNESS:** I saw more people in distress in
14 2008 than I did in 2007.

15 **Q.** BY MS. POLK: Did you ever have any
16 conversations with James Ray about the number of
17 people in distress?

18 **A.** No.

19 **Q.** Did Mr. Ray ever approach you about your
20 contribution to taking care of the people in
21 distress?

22 **A.** No. Actually, we were told not to
23 approach James Ray because he doesn't want us to
24 talk to him.

25 **MR. LI:** Objection. Foundation.

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1 THE COURT: Sustained. That answer is
2 stricken.
3 Q. BY MS. POLK: Have you also been involved
4 at Angel Valley Center in other sweat lodge
5 ceremonies?

6 A. Yes.

7 Q. In what capacity and when?

8 A. I was the fire keeper and door keeper
9 during 2007, 2008.

10 Q. Do you recall approximately how many
11 other sweat lodge ceremonies you were the door
12 keeper or the fire tender for?

13 A. I think I probably did 10 sweat lodges,
14 10 or 12 of them all together. And only three were
15 for James Ray.

16 Q. And are you talking about 2008 through --
17 or 2007 through 2009 now?

18 A. That's correct.

19 Q. Did you ever see any problems at the
20 nonJames Ray sweat lodge ceremonies similar to what
21 you had seen for the James Ray sweat lodge
22 ceremonies?

23 A. Not at all.

24 Q. What are some of the difference you saw
25 between the James Ray ceremonies and the nonJames

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1 Ray ceremonies?

2 MR. LI: Objection. Relevance.

3 THE COURT: Overruled.

4 You may answer.

5 THE WITNESS: The biggest thing was the number
6 of people inside the sweat lodge. Usually -- you
7 know -- 12 to 15 people would be the max. And then
8 the next thing would be how many rocks were brought
9 into the sweat lodge in itself. Usually -- you
10 know -- there are 15 or 20 all together.

11 And then the sweat lodge in between
12 rounds they open up the door, and the guy at the
13 door that's running the sweat lodge is really
14 attentive to the people in the sweat lodge, making
15 sure that they're cooling down enough. They leave
16 the door open for 10 or 15 minutes at a time. They
17 make sure everybody needs water, if anybody needs
18 to come in or out.

19 They're in contact with each and every
20 person in the sweat lodge in making sure that each
21 and every person is okay. And if they're not,
22 well, then we -- you know -- we help them out.
23 They cool down and usually go back in.

24 Most of the time people do get
25 overheated, so they come out to cool down a bit or

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1 they just open the door and let it stay open for a
2 while until people are okay, and then they do the
3 next round.

4 Q. BY MS. POLK: In 2009 you were also
5 present at the sweat lodge ceremony conducted by
6 James Ray on October 9?

7 A. That's correct.

8 Q. And your role at that time was what?

9 A. I was a fire keeper again. But actually,
10 it was my wife and I that were hired for it. I was
11 the fire keeper, and then she sat at the door all
12 the time.

13 Q. Okay. And to clarify, in 2007 you were
14 volunteers; is that correct?

15 A. Yes. That's correct.

16 Q. And 2008 did you get hired or employed by
17 Angel Valley?

18 A. I was employed by Angel Valley. I was
19 the property manager.

20 Q. From what date to what date?

21 A. From approximately March of '07 to
22 December of '08.

23 Q. What happened after December of '08?

24 A. Management changed. The general manager
25 that was there left, and we decided not to stay

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1 employed at Angel Valley.

2 Q. What was your relationship then in 2009
3 in terms of employment and the sweat lodge ceremony
4 conducted in October?

5 A. Well, Michael Hamilton asked me if I'd be
6 interested in being the fire keeper for the sweat
7 lodge. And I had some reservations about it, but
8 eventually I said yes, I would do it.

9 Q. And why did you have reservations?

10 A. Because of the last two years. The chaos
11 actually that went on during those last two years
12 and the people that were coming out and just -- it
13 was a bad scene. And I didn't know I wanted to be
14 part of it again. I think the ultimate reason we
15 did do it was because I needed some money. I
16 hadn't been employed for a while and I could use
17 some cash. It was a good job.

18 Q. So let's talk about 2009, then,
19 October 8. Once the sweat lodge ceremony began,
20 you remained outside tending the fire?

21 A. That's correct.

22 Q. At some point did you see something that
23 started to concern you?

24 A. Well, it always concerned me when people
25 started coming out and they're -- you know --

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1 **landing in the dirt face first. We have to drag**
 2 **them away from the door. That's not usually a good**
 3 **thing. As the night progressed --**

4 MR. LI: Move to strike as a narrative, Your
 5 Honor.

6 THE COURT: Overruled.

7 THE WITNESS: Okay. As the night went on,
 8 people came out of the sweat lodge but not as many
 9 it didn't seem like. It was -- everything was the
 10 same. People would come out and they would have
 11 their troubles. The first -- you know -- round the
 12 handful of people came out that didn't go back in.

13 And then it just progressed the same as
 14 the others except for about three quarters of the
 15 way through this gentleman thought he was having a
 16 heart attack. And there was making an awful lot of
 17 noise about that. And actually James from the
 18 sweat lodge called out to him and told him that
 19 he'd be fine and don't worry about it. You're just
 20 going through whatever you need to go through.

21 Q. BY MS. POLK: And you heard that?

22 A. Oh, yeah. That was very loud. It was --
 23 they were yelling back and forth. Well, the reason
 24 I think James stopped and talked to him is because
 25 he was so loud, making so much noise, saying I'm

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1 **having a heart attack.**

2 MR. LI: Your Honor, move to strike as
 3 speculation.

4 THE COURT: Granted as to that one remark.

5 Q. BY MS. POLK: Mr. Mercer, do you know the
 6 name of the person who yelled out he was having a
 7 heart attack?

8 A. I couldn't recall.

9 Q. And will you tell the Court more
 10 specifically when in terms of the ceremony that
 11 incident occurred.

12 A. That was after the fifth round, I would
 13 say.

14 Q. And what happened specifically? Did the
 15 man come out of the sweat lodge?

16 A. Yeah. He came out. And he got to the
 17 door, and we had to drag him the rest of the way.
 18 But then the James Ray people were taking care of
 19 him, and I went back to the fire.

20 Q. And why did you have to drag him when he
 21 got to the door?

22 A. Because he couldn't walk himself. He
 23 gets there -- you get to the door and most people
 24 pass out once they get that transition between the
 25 hot and the cold. By that time -- usually it's

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1 **getting dark. At that time it was still during the**
 2 **day.**

3 Q. You helped drag him to an area where?

4 A. Over where we had the tarps put out so
 5 they could lay there and get cooled off.

6 Q. And you said the man started yelling?

7 A. Her started -- yeah. He started yelling
 8 I'm having a heart attack. I'm going to die. I'm
 9 having a heart attack. I'm dying. I'm dying. And
 10 then that's when James Ray --

11 Q. What did James Ray say?

12 A. Well, he called his name a couple times
 13 and got his attention and told him that he's not
 14 going to die. He's going to be fine and that he is
 15 where he's supposed to be in his journey, something
 16 quite -- something like that. But he said he'd be
 17 fine. He says you're going to be fine. Don't
 18 worry.

19 Q. Where was James Ray when he said yelled
 20 that out?

21 A. He was inside the sweat lodge.

22 Q. Was the door open or closed?

23 A. I think it was closed.

24 Q. How did the man respond after James Ray
 25 yelled out and told him he wasn't going to die?

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1 A. He calmed down. And that's -- I think
 2 that's about all I remember. I don't remember
 3 saying anything.

4 Q. Did anything happen after that that drew
 5 your attention?

6 A. To him?

7 Q. No. In terms of sweat lodge
 8 participants.

9 A. Yeah. It -- you know -- as it went on,
 10 people were coming out like usual, but not as many
 11 people were coming out. And they keep on asking if
 12 you want to come back in. Do you want to come back
 13 in?

14 And at one point one lady wanted to go
 15 back in. She got to the door and she decided that
 16 she didn't want to go back in. And there was one
 17 person behind her, one of the James Ray dream
 18 people pushing her, pushing her trying to go back
 19 in. You can make it. You can make it. You can go
 20 back in.

21 And she got into the door just a little
 22 bit, and she came out. She just decided that she
 23 wasn't going to go back in. There was a lot of
 24 pressure to get her back in and some of the other
 25 people. They seemed like they were pushing a

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1 **little bit more this year than usual.**

2 **Q.** By the time the ceremony in 2009 came to
3 an end, were you tracking how many rounds were
4 done?

5 **A.** Yeah. I think there was about eight
6 rounds done.

7 **Q.** Was that -- did that strike you as
8 unusual?

9 **A.** Well, yeah. Well, not for James Ray it's
10 not unusual.

11 MR. LI: Your Honor, I'm going to object to
12 this further line of questioning. This is beyond
13 the scope of the 404(b) hearing.

14 THE COURT: Ms. Polk, if you would respond to
15 that, the relevance.

16 MS. POLK: Judge, I can -- with my next
17 question I think I can clear that up.

18 THE COURT: Go ahead.

19 **Q.** BY MS. POLK: By the end of the sweat
20 lodge ceremony in 2009, did you notice a difference
21 in the number of participants still inside versus
22 '07 and '08?

23 **A.** Yes.

24 **Q.** And what was that difference?

25 **A.** Usually there would be more than half of
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1 **the people out. This time there was considerably**
2 **less than half the people out. The sweat lodge was**
3 **still pretty full.**

4 **Q.** And did you notice a difference from the
5 2009 ceremony, comparing the 2009 ceremony to the
6 ceremonies in '07 and '08, a difference in the
7 encouragement or pressure on participants to stay
8 in or go back into the sweat lodge?

9 MR. LI: Objection as to form, who is applying
10 the pressure. And also foundation.

11 THE COURT: Sustained as to foundation.

12 MS. POLK: Judge, at this point it's just a
13 yes or no question. If he says yes, I can lay the
14 foundation for how he notices it.

15 THE COURT: The specific area of foundation
16 had to do with tying the encouragement to whom, who
17 was actually doing that from this person's
18 perspective. I sustained on that basis.

19 MS. POLK: Okay.

20 **Q.** Mr. Mercer, were you aware in 2009 of --
21 were you aware of anybody encouraging participants
22 to stay in the sweat lodge?

23 **A.** Yes.

24 MR. LI: Objection. Relevance.

25 MS. POLK: And who?

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1 THE COURT: The who.

2 **Q.** BY MS. POLK: And who was encouraging
3 participants to stay in the sweat lodge?

4 **A.** Mostly the James Ray people on the
5 outside. They would encourage the ones that came
6 out to go back in.

7 **Q.** And were you aware if James Ray himself
8 was encouraging people who had gone out to come
9 back in?

10 **A.** Well, yeah. Every times he opens the
11 door, he encouraged people to come back in.

12 **Q.** And had you observed that in 2007 and
13 2008?

14 **A.** Yes.

15 **Q.** Was there a difference between '07 and
16 '08 in terms of that encouragement and what you
17 observed in 2009?

18 MR. LI: Objection as to foundation, who is
19 doing the encouraging.

20 THE COURT: I'm making an assumption on that
21 based on the prior questions.

22 But, Ms. Polk, if you could -- just as
23 long as I know what this witness is saying about
24 who is doing the encouraging during the different
25 years. Again, from this witness's perspective.

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1 And it's not clear to me.

2 **Q.** BY MS. POLK: In 2009, Mr. Mercer, who
3 did you hear encouraging participants to come back
4 in?

5 **A.** Every time the door opened, James Ray
6 would -- every time the door would open, he would
7 ask if anybody would want to come back in before
8 they closed it.

9 **And then his Dream Team, as they called**
10 **it, would go around to the people on the outside**
11 **and ask if they wanted to come back in or not. It**
12 **seemed like they were a bit more pushy in the last**
13 **year than it was the other two years.**

14 **Q.** And what you just described for 2009 --
15 did that happen in 2007 and 2008 as well?

16 **A.** Yes.

17 **Q.** And the difference, then, between '07-'08
18 and '09 was what?

19 **A.** Just the pressure that they put on them.
20 They asked them a bit more and really encouraged
21 them, really encouraged them, to go back in. And
22 the other two years they encouraged them but not as
23 strong.

24 **Q.** And, in fact, by the end of the ceremony
25 in 2009, what did you notice in terms of number of

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1 participants still in the sweat lodge?
 2 **A. Well, there was three people --**
 3 MR. LI: Objection. Asked and answered.
 4 THE COURT: Overruled.
 5 You may answer that.
 6 THE WITNESS: There was three people left in
 7 the sweat lodge.
 8 Q. I'm sorry. This is for the last round.
 9 **A. Oh. For the last round. Oh, jeez.**
 10 **There was more than half of the people in there. I**
 11 **couldn't tell you exact number. But there was well**
 12 **more than half of the people still in the sweat**
 13 **lodge. And the rest of the people were just**
 14 **sitting around or laying in the dirt or doing**
 15 **whatever they were doing.**
 16 Q. In 2007 did you make any observations
 17 about whether or not Mr. Ray had a safety plan in
 18 place to take care of participants?
 19 **A. Not as far as I knew.**
 20 Q. And in 2008 did you observe whether or
 21 not Mr. Ray had a safety plan in place to take care
 22 of his participants?
 23 **A. Not that I knew of.**
 24 Q. And in 2009 did you notice whether
 25 Mr. Ray had a safety plan in place to take care of
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1 the participants?
 2 **A. I was told that he had a nurse on the**
 3 **staff this time. So that was one of the deciding**
 4 **factors of me helping with the sweat lodge, knowing**
 5 **that there was a nurse there.**
 6 Q. In 2009 did you meet the nurse?
 7 **A. Not officially. No. I kind of found out**
 8 **who it was through other people. But I didn't**
 9 **officially meet the nurse. No.**
 10 Q. Did you find out who it was before the
 11 ceremony began?
 12 **A. I can't recall.**
 13 Q. In 2009 do you recall seeing a nurse
 14 tending to participants who were in distress?
 15 **A. Well, the lady that called herself a**
 16 **nurse, yeah. I saw her attending to people. She**
 17 **had been on the outside the whole time of the sweat**
 18 **lodge.**
 19 Q. In 2007 did you have -- do you have any
 20 observations about whether staff knew how to take
 21 care of the people in distress?
 22 MR. LI: Objection, Your Honor. Lacks
 23 foundation, speculation.
 24 THE COURT: Overruled.
 25 You may answer that.
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1 THE WITNESS: Repeat the question.
 2 Q. BY MS. POLK: In 2007 did you observe
 3 whether or not James Ray's staff knew how to take
 4 care of participants who were in distress?
 5 **A. Well, it didn't seem like it because they**
 6 **were doing the same things they were before, I**
 7 **guess. No. I didn't see --**
 8 Q. And have you received any training in how
 9 to take care of people emerging from a sweat lodge
 10 ceremony who are overheated?
 11 **A. Well, no. Not in a particular -- people**
 12 **in the a sweat lodge, no.**
 13 Q. In 2008 did you observe whether James
 14 Ray's staff seemed to know how to take care of the
 15 participants who were in distress?
 16 **A. 2008 and 2007 were pretty much the same.**
 17 **The same people almost were there, and they did the**
 18 **same things.**
 19 Q. How about 2009? Did you observe whether
 20 staff seemed to know how to take care of people in
 21 distress?
 22 **A. That kind of was the shocker there**
 23 **because they said they had a nurse there. And**
 24 **after my wife and my daughter pulled out these**
 25 **people from the back of the sweat lodge, she came**
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1 **over and she didn't quite know what to do. And she**
 2 **was -- I don't know if she was in panic or -- you**
 3 **know -- what her deal was, but she seemed like she**
 4 **wasn't sure what to do.**
 5 Q. You referred to pulling people out of the
 6 back of the sweat lodge. When did that happen?
 7 **A. That happened after the sweat lodge was**
 8 **over and all the people had left. The door keeper,**
 9 **my wife -- she looked there and saw there was three**
 10 **people still laying in the sweat lodge.**
 11 **And she went to James Ray and asked him**
 12 **if she could open up the back of the sweat lodge to**
 13 **get them out. And I'm not sure what he said**
 14 **because I wasn't there.**
 15 **But she decided to go to the back of the**
 16 **sweat lodge. She opened up the back, and there was**
 17 **three people laying there. And she pulled two of**
 18 **them out. My daughter was right there with them.**
 19 **So they pulled two of them out. And then I heard**
 20 **her calling for help.**
 21 **So I went back to the back of the sweat**
 22 **lodge. And my daughter was trying to pull another**
 23 **guy out but he was just too big. So I grabbed his**
 24 **arm and pulled him out.**
 25 MR. LI: Objection. Beyond the scope. Also a
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1 narrative.

2 THE COURT: Sustained.

3 Q. BY MS. POLK: Once you assisted in
4 pulling individuals out of the back of the sweat
5 lodge, you had contact or you had observations of
6 the nurse who was there in 2009?

7 A. Yes.

8 Q. What did you see?

9 A. **She came over and saw the people laying**
10 **there. And I told her that their lips are blue and**
11 **they're not breathing.**

12 MR. LI: Objection. Beyond the scope. Move
13 to strike. Nonresponsive.

14 THE COURT: Sustained.

15 MS. POLK: On which grounds, Judge?

16 THE COURT: It's the relevance at this point,
17 Ms. Polk. Tying this particular testimony into
18 404(b) and how another act might relate in and
19 showing an exception under 404(b). I'm losing the
20 concept of that with the detail in this testimony.
21 It's just far beyond what I would think would be
22 the normal scope of a 404(b) proceeding. So I
23 believe it's irrelevant.

24 Q. BY MS. POLK: And, Your Honor, when
25 Mr. Li cross-examined Amayra Hamilton, he tried to
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1 establish that there were differences between 2009
2 to distinguish 2009 from the earlier events. In
3 terms of 404(b), one of the differences that he
4 tried to establish was that there was a registered
5 nurse on site.

6 And the point of this examination is to
7 illustrate for the Court or prove to the Court that
8 there really were no differences, that maybe there
9 was somebody there who was a registered nurse but
10 it wasn't somebody who could take care of
11 participants in 2009 any better than staff took
12 care of participants in previous years?

13 THE COURT: Ms. Polk, this really seems to be
14 a minitrial, then. It appears to me we're just
15 well beyond 404(b). So I can't argue that Mr. Li
16 didn't get into some areas that were beyond 404(b).
17 So strictly from what you can do on redirect,
18 you're probably correct. But I want to get this
19 back to 404(b) issues as much as possible. We need
20 to do that.

21 MS. POLK: And I appreciate that, Judge. My
22 point that this event in 2009 is just like the
23 prior events in terms of lack of care for the
24 participants, being on notice that the way Mr. Ray
25 was conducting the sweat lodge ceremony was very

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1 risky, failing to take precautions or to react
2 appropriately and in conducting a ceremony in 2009
3 that was as dangerous or more dangerous than
4 '07-'08, in the previous years.

5 THE COURT: Mr. Li?

6 MR. LI: Your Honor, there is no 404(b)
7 exception for just proving the acts conformity with
8 prior acts, which is, essentially, what she's
9 saying. There are very limited, narrow exceptions
10 to 404(b).

11 Essentially, what Ms. Polk is saying is
12 Mr. Ray's organization did one thing in 2006. They
13 did it in 2007. They did it in 2008 and 2009.
14 That's exactly propensity evidence. And that's not
15 permissible.

16 What is permissible are very narrowly
17 described -- and I'm not going to make the case for
18 Ms. Polk. But she has to fit her arguments within
19 a very narrow band of exceptions.

20 THE COURT: Ms. Polk, in any event, you've
21 made a very clear offer of proof. And for purposes
22 of 404(b) that's, essentially, all I would need.
23 And I made a note of that. But I think it's beyond
24 what is appropriate for 404(b). So the objection
25 is sustained.

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1 MS. POLK: Okay. Thank you. May I have a
2 moment, Your Honor?

3 THE COURT: Yes.

4 (Pause in proceedings.)

5 MS. POLK: I just have a couple more
6 questions, Your Honor.

7 THE COURT: Okay.

8 Q. BY MS. POLK: Mr. Mercer, you're aware
9 that in 2009 911 was called?

10 MR. LI: Objection. Leading.

11 THE COURT: Overruled.

12 You may answer that.

13 THE WITNESS: I was the one that told my wife
14 to call 911. I actually told Amayra Hamilton to
15 call it first. And then she hesitated, so I told
16 my wife to go call 911.

17 Q. BY MS. POLK: In 2007 did you believe 911
18 should have been called?

19 MR. LI: Objection. Relevance.

20 THE COURT: Overruled.

21 You may answer that.

22 THE WITNESS: Yes.

23 Q. BY MS. POLK: And in 2008 did you believe
24 911 should be called?

25 A. **Yes. I wasn't in a position to do that.**

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1 I was just the fire keeper. I do have some -- you
2 know -- training in CPR. But other than that --
3 you know. So there was always somebody that was
4 above me to make those decisions.

5 Q. And who was that in 2007?

6 A. Usually the Dream Team and James Ray.

7 Q. And same as 2008?

8 A. Yes.

9 Q. Thank you, Mr. Mercer.

10 Thank you, Your Honor?

11 THE COURT: Thank you, Ms. Polk.

12 Mr. Li, cross-examination?

13 MR. LI: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. LI:

16 Q. Mr. Mercer, you worked for Amayra and
17 Michael Hamilton; isn't that correct?

18 A. That's correct.

19 Q. You didn't work for Mr. Ray or James Ray,
20 International; correct?

21 A. No, I did not.

22 Q. Miss Hamilton and Michael Hamilton --
23 they had this facility called Angel Valley, and you
24 worked there?

25 A. Correct.

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1 Q. And you worked there?

2 A. That's right.

3 Q. And those were the people who were paying
4 your bills; correct?

5 A. That's right.

6 Q. And they would tell you what to work on;
7 is that correct?

8 A. Exactly.

9 Q. And they would tell you -- they would
10 provide the material to you when you were making
11 the sweat lodge?

12 A. Yes.

13 Q. They would provide what rocks to use?

14 A. Yeah. They would tell us to go out and
15 get the rocks. It would be around the area, so
16 we'd collect them.

17 Q. They would tell what you wood to use for
18 the sweat lodge?

19 A. Yeah. Basically.

20 Q. What wood to use to burn?

21 A. There was a pile right there that was
22 provided for us.

23 Q. So now I'm going to focus for a second
24 just generally on your role at the sweat lodges.

25 You were the fire tender; correct?

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1 A. Yes.

2 Q. How far is the fire pit from the door
3 approximately?

4 A. 25 feet.

5 Q. And would you agree with me that there
6 were very thick -- there was a very thick covering
7 over the sweat lodge?

8 A. Yes.

9 Q. And would you agree with me that from 25
10 feet away with a very thick covering you couldn't
11 hear everything that was going on inside?

12 A. That's correct.

13 Q. Would you also agree with me that in
14 general it was very noisy inside?

15 A. No. I wouldn't agree with that.

16 Q. Were people chanting?

17 A. Well, yeah. There was always some
18 singing going on. It was, I guess, directed
19 chanting and singing. Yes.

20 Q. And were people yelling out sort of
21 proclamations?

22 A. Yes.

23 Q. And were people, basically, yelling at
24 the top of their lungs that they're going to --
25 going to be better fathers or mothers or --

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1 A. Yes.

2 Q. So it's pretty loud inside the sweat
3 lodge?

4 A. It can get pretty loud sometimes. Yes.

5 Q. Now, just so we're clear on the
6 difference between encouraging and forcing, you're
7 not telling us that anybody from James Ray's
8 organization or James Ray himself was forcing
9 anybody to stay in any sweat lodge?

10 A. Not at all.

11 Q. And every single person who was in the
12 sweat lodge and every one of the incidents, every
13 one of the sweat lodges you observed, had the free
14 will to come or go?

15 A. That's correct.

16 Q. And they could go back in if they wanted?

17 A. That's correct.

18 Q. If when you say "encourage," was it -- it
19 was more along the lines of you can do this, it
20 wasn't it?

21 A. Yes. You're more than that. That's the
22 biggest line that I remember hearing. You're more
23 than that. You can do this.

24 Q. Similar to go, go, go? You can do this?

25 A. Uh-huh.

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1 Q. I'm sorry. Just for the record --
 2 A. Yes.
 3 Q. Thank you. And in terms of Mr. Ray's
 4 encouragement, when he would open the flap, it
 5 was -- I think I wrote it down when you were
 6 testifying -- he would ask if anybody wanted to
 7 come in?
 8 A. Yeah.
 9 Q. He didn't say you better get in here?
 10 A. No, no. The door opens up, and he -- you
 11 know -- gets water, whatever, he gets his new water
 12 in there. And before it closes he says does
 13 anybody want to come back in. And that's when the
 14 Dream Team goes around to the people outside.
 15 Q. Now, do you think folks -- folks with the
 16 Dream Team weren't abusive to any of the people
 17 outside?
 18 A. No. Not at all.
 19 Q. It wasn't like marine corps drill
 20 sergeants, were they?
 21 A. No.
 22 Q. And Mr. Ray himself wasn't like a marine
 23 corps drill sergeant, was he?
 24 A. No, he wasn't.
 25 Q. This is a very -- you know -- I hate to
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1 use the term touchy-feely, but this is a somewhat
 2 touchy-feely event?
 3 A. Well, yeah. I mean, everybody goes to
 4 the sweat lodge in the spirit of love, and they're
 5 supposed to grow spiritually out of it.
 6 Q. And, in fact, many of the rounds involve
 7 exactly those types of concepts about love --
 8 A. Exactly.
 9 Q. Spirituality?
 10 A. Yes.
 11 Q. And it wasn't about -- you know -- it
 12 wasn't screaming at people. You're no good if you
 13 don't do this. It wasn't that kinds of stuff, was
 14 it?
 15 A. No.
 16 Q. Now, the 2009 sweat lodge was actually
 17 less hot than the 2008 sweat lodge; correct?
 18 A. I wouldn't agree with that.
 19 Q. Did you tell Detective Diskin that there
 20 were more people in 2008 than 2009?
 21 A. No. In 2009 we had to build the sweat
 22 lodge so they could get more people in there.
 23 Q. So you didn't tell Detective Diskin that?
 24 A. You know, if it was written in that
 25 statement that I told him, then that's what I said.

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1 But -- you know -- it's been over a year now so I
 2 kind of have forgotten some of the things I said.
 3 Q. I understand.
 4 A. I would go with what I told him at that
 5 time because that's when my memory was the
 6 freshest.
 7 Q. Okay. Did you tell Detective Diskin that
 8 more rocks were used in 2008 than 2009?
 9 A. I don't think so.
 10 Q. Did you tell Detective Diskin that there
 11 were fewer rocks used in 2009?
 12 A. I don't think so.
 13 Q. Did you say to Detective Diskin at this
 14 time Mr. Ray in 2009 sometimes only asked for 4
 15 rocks a round as opposed to 10 to 12 rocks usually?
 16 A. That's correct. Sometimes he would ask
 17 for less because the 2009 rocks were extremely hot.
 18 Q. Did you --
 19 MS. POLK: I'm sorry. I didn't hear.
 20 THE WITNESS: I said that the 2009 rocks were
 21 a lot hotter than the ones in 2008.
 22 Q. BY MR. LI: Did you say -- so with
 23 respect to -- you deny that you said that more
 24 rocks were used in 2008 than 2009?
 25 A. You know, again, I don't quite remember
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1 if I said that or not.
 2 Q. If we could play the audiotape of the
 3 interview. This is a transcript 8, line 13 through
 4 19.
 5 Strike that.
 6 You don't remember one way or the other?
 7 A. You know, with the sweat lodges and
 8 rocks, they ask for so many, so I bring them in.
 9 And I don't make a mental note how many there were.
 10 Q. Now, prior to 2007, you had never
 11 experienced a sweat lodge before; correct?
 12 A. Not at all.
 13 Q. So you had no idea what they looked like
 14 at the end -- at the end of the ceremony?
 15 A. No.
 16 Q. You didn't know what the experience was
 17 like?
 18 A. No.
 19 Q. Now, you'd agree that Gary Palisch did
 20 know?
 21 A. You know, I don't know Gary's
 22 extensiveness with sweat lodges. I know that he's
 23 experienced it before. But that's all I know.
 24 Q. Okay. And would you agree that
 25 Mr. Palisch or not agree -- I'm not asking you one

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1 way or another -- to decide one way or another.
 2 Would you agree -- I'm not suggesting one way or
 3 another -- that Gary Palisch has conducted a large
 4 number of sweat lodges?

5 **A. I wouldn't know.**

6 **Q.** However, Mr. Palisch was observing all of
 7 the same sweat lodges were you observing; correct?

8 **A. Except for the 2009.**

9 **Q.** Except the 2009. But the 2007? 2008?

10 **A. Uh-huh.**

11 **Q.** He was observing both of those?

12 **A. Yes.**

13 **Q.** Did he say to you this is a disaster? We
 14 better call 911?

15 **A. No. He didn't say that. You know, he**
 16 **did say this is a disaster. But he didn't tell me**
 17 **to call 911.**

18 **Q.** Okay. But did he say these people are in
 19 medical distress? We better get a doctor to help
 20 them?

21 **A. No.**

22 **Q.** Now, you've described 2007 as having many
 23 people in medical distress?

24 **A. Yes.**

25 **Q.** People on the ground?

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1 **A. Yes.**

2 **Q.** People in convulsions?

3 **A. Yes.**

4 **Q.** Could you explain to me what you mean by
 5 "convulsions" ?

6 **A. Well, in 2008 is the one that I thought**
 7 **was in convulsions is when all her muscles in her**
 8 **body were just tensed up. She couldn't move her**
 9 **fingers. She couldn't move her arms. She couldn't**
 10 **move her legs. She was in a fetal position. She**
 11 **could barely open her eyes, and she couldn't move.**
 12 **Her muscles were locked. That's what I call a**
 13 **convulsion.**

14 **Q.** Okay. So her muscles were locked --

15 **A. Her muscles were locked and she couldn't**
 16 **move.**

17 **Q.** And I'm not a doctor either. But I
 18 typically -- when I think of convulsions, I think
 19 of somebody throwing up and losing complete control
 20 of their body.

21 **A. That wasn't her, but that was many other**
 22 **people.**

23 **Q.** Now, did you tell Mr. Palisch -- did you
 24 tell Amayra Hamilton about all the people in
 25 medical distress?

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1 **A. Yes. Many times. Actually, Amayra**
 2 **didn't come down to the sweat lodge but once any of**
 3 **those three years.**

4 **Q.** Did you tell Mr. Hamilton about the
 5 people in medical distress?

6 **A. No.**

7 **Q.** Did you tell Mr. Palisch about the people
 8 in medical distress?

9 **A. Well, yeah. He was there.**

10 **Q.** Okay. And you came back to work on the
 11 next sweat lodge in 2008; correct?

12 **A. Yes, I did. That's when I was employed**
 13 **by Angel Valley.**

14 **Q.** Now, I'm going to go back for a second on
 15 the issue of the number of rocks in 2009 versus
 16 2008. And I would ask to show Ms. Polk, if I
 17 could, the testimony?
 18 (Pause in proceedings.)

19 **MR. LI:** May I approach the witness with the
 20 transcript?

21 **THE COURT:** You may.

22 **Q.** BY MR. LI: I'd ask you to look at this
 23 transcript and see if it refreshes your
 24 recollection as to what you told Detective Diskin
 25 in your interview with him about how many rocks

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1 were being used in 2009 versus 2008.

2 **A. Okay.**

3 **Q.** Having reviewed that transcript, is your
 4 recollection refreshed as to what you told
 5 Detective Diskin?

6 **A. Yes, it is.**

7 **Q.** Did you tell Detective Diskin that there
 8 were more rocks used in 2008 than 2009?

9 **A. Yeah. That's correct.**

10 **Q.** Did you tell Detective Diskin that there
 11 were fewer rocks used in 2009? I'm sorry. That's
 12 the same question. Did you tell Detective Diskin
 13 that Mr. Ray sometimes only asked for four rocks a
 14 round?

15 **A. Only once he did that.**

16 **Q.** Thanks. Now I'm going to move to 2008,
 17 the sweat lodge. Do you have it in your mind?

18 **A. Yes.**

19 **Q.** This was the sweat lodge ceremony that
 20 you described as having many people also in
 21 distress?

22 **A. That's correct.**

23 **Q.** People on the ground?

24 **A. Yes.**

25 **Q.** People in convulsions?

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1 **A. Yes.**
 2 **Q.** People in medical distress or in
 3 distress?
 4 **A. Yes.**
 5 **Q.** Now, did you tell Amayra Hamilton in
 6 2008 about the people in distress?
 7 **A. Yes.**
 8 **Q.** Did you tell Mr. Hamilton, Michael
 9 Hamilton, about the people in distress?
 10 **A. I personally did not.**
 11 **Q.** Did you tell Mr. Palisch about the people
 12 in distress?
 13 **A. Yes.**
 14 **Q.** And you came back anyway in 2009 to work
 15 on the sweat lodge again; correct?
 16 **A. That's correct.**
 17 **Q.** And your testimony earlier, I believe,
 18 was that more people were in distress in 2008 than
 19 2007 but they were pretty much the same?
 20 **A. Yeah.**
 21 **Q.** I'm going to -- if I could put on the
 22 overhead State's Exhibit 24. This is one of the
 23 pictures Ms. Polk showed you about the various
 24 folks that you believed were in distress?
 25 **A. Yes.**

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1 **Q.** And this is -- I'm going to put on the
 2 exhibit or put on the display device Exhibit 23.
 3 And this is another picture of people that you
 4 described as showing people in distress; correct?
 5 **A. Yes.**
 6 **Q.** Going back to Exhibit 23. If you could,
 7 using that fancy technology, point out the person
 8 that you had shown before who was unconscious. I
 9 think it was probably this one?
 10 **A. Yeah. Right there.**
 11 **Q.** Okay. I think I messed up your marking
 12 there. But those are the two people or one, the
 13 person who is unconscious?
 14 **A. Yeah. Right there. You know -- I don't**
 15 **know if she was unconscious right now. But I**
 16 **remember pulling her out.**
 17 **Q.** Okay. So was she unconscious?
 18 **A. When I pulled her out, yes.**
 19 **Q.** So I'm going to put on the display
 20 Exhibit 42. In the binder it's No. 8.
 21 I misspoke. I meant Exhibit 41, Your
 22 Honor. Defense 8 or the binder tab 8.
 23 **THE COURT:** All right.
 24 **MR. LI:** I apologize, Your Honor. I've shown
 25 it to opposing counsel, and I'd asked ask for

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1 admission of exhibits 41, 42 and 45 and 46.
 2 **THE COURT:** Ms. Polk?
 3 **MS. POLK:** No objection, Your Honor.
 4 **THE COURT:** 41, 42, 45 and 46 are admitted for
 5 this hearing.
 6 (Exhibits 41, 42, 45 and 46 admitted.)
 7 **Q.** BY MR. LI: This is 41. Now, Mr. Mercer,
 8 is that woman with the thumbs up -- is that the
 9 same woman you were identifying in the other
 10 picture?
 11 **A. It looks like it.**
 12 **Q.** She's not unconscious there, is she?
 13 **A. No. She looks all right there.**
 14 **Q.** I'm putting on the --
 15 Sorry, Your Honor. This is Exhibit 45.
 16 Is that woman sitting up there and smiling at the
 17 camera -- is she the same woman that you had
 18 pointed out in the other exhibit?
 19 **A. It looks like it.**
 20 **Q.** And now I'm placing on the projector
 21 Exhibit 46. And the woman sitting -- so is that
 22 woman now leaned over and talking to this other
 23 person -- is that that same woman who you had
 24 described in the other picture as unconscious?
 25 **A. Yes.**

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1 **Q.** And the woman lying next to her appears
 2 to be spraying other people?
 3 **A. That's correct.**
 4 **MR. LI:** I'm going to show opposing counsel
 5 the other pictures.
 6 **MS. DO:** May I approach just to expedite this?
 7 **THE COURT:** Yes.
 8 **MR. LI:** Your Honor, I'd move for now exhibits
 9 25 through 37 into evidence.
 10 **MS. POLK:** No objection.
 11 **THE COURT:** 25 through 37 inclusive are
 12 admitted.
 13 (Exhibits 25 through 37 admitted.)
 14 **MR. LI:** Thank you, Your Honor.
 15 **Q.** Mr. Mercer, this is another scene from
 16 2008. Do you recognize it?
 17 **A. Yeah. It looks like the rest of the**
 18 **sweat lodgers.**
 19 **Q.** And has folks lying in the mud cooling
 20 off?
 21 **A. Yes.**
 22 **Q.** People walking around?
 23 **A. Exactly.**
 24 **Q.** People taking pictures?
 25 **A. Yeah.**

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1 Q. And that was Exhibit 25. I'm going to
2 put on the monitor Exhibit 26. And that's another
3 picture of folks after the sweat lodge ceremony?
4 A. **That is correct.**
5 Q. People standing around?
6 A. **Yes.**
7 Q. Putting on the projector Exhibit 27.
8 These are more folks who were at the sweat lodge in
9 2008?
10 A. **Yeah. I don't know the difference**
11 **between 2008 and 2007. I don't know the faces, but**
12 **it looks the same.**
13 Q. Folks walking around drinking water,
14 taking pictures of each other?
15 A. **Yes.**
16 Q. I'm putting on the projector Exhibit 28.
17 Another picture of folks lying in the mud cooling
18 off?
19 A. **Exactly.**
20 Q. Similar to all the other sweat lodges you
21 saw?
22 A. **Yes.**
23 Q. Putting on the projector Exhibit 29.
24 Also similar to all the other pictures -- all the
25 other sweat lodges you saw?

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1 A. **Yes. All the other James Ray sweat**
2 **lodges. Not the other ones.**
3 Q. All the other James Ray sweat lodges?
4 A. **Yes.**
5 Q. Exhibit 31. The same as all the other
6 James Ray sweat lodges?
7 A. **Yup.**
8 Q. Exhibit 32. Same as all the other James
9 Ray sweat lodges?
10 A. **Yes.**
11 Q. Exhibit 33. Same as all the other James
12 Ray sweat lodges?
13 A. **Yes.**
14 Q. There is a few that are taking place
15 before that I'm not going to put up in the interest
16 of time. Here's another one, Exhibit 37.
17 A. **We saw that one already.**
18 Q. Same as all the other James Ray sweat
19 lodges?
20 A. **Yeah.**
21 MR. LI: Your Honor, I'd move exhibits 47
22 through 78 into evidence.
23 THE COURT: Counsel?
24 MS. POLK: Your Honor, a lot of them are
25 duplicates of the ones that were just admitted into

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1 evidence. I don't have any objection, but I don't
2 know that the Court wants to end up with multiple
3 copies of the same photographs.
4 MR. LI: I'll edit out the ones that are the
5 same.
6 THE COURT: There is no objection. So 47
7 through 78 would be admitted. However, you
8 indicated you're going through them. You won't
9 duplicate.
10 (Exhibits 47 through 78 admitted.)
11 MR. LI: I will do my absolute best, Your
12 Honor.
13 Exhibit 47. Is there any way to cut down
14 the glare?
15 Q. Is this the same as all the other James
16 Ray sweat lodges?
17 A. **Yes.**
18 Q. Exhibit 48. This fellow here smiling is
19 the same as the other James Ray sweat lodges?
20 A. **Yeah. Yes.**
21 Q. I'm now editing out the -- Exhibit 53.
22 Again, same as all the other James Ray sweat
23 lodges?
24 A. **Yes.**
25 Q. Exhibit 54?

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1 A. **Yes.**
2 Q. Exhibit 56?
3 A. **Yes.**
4 Q. Folks spraying each other the same as all
5 the other James Ray sweat lodges?
6 A. **That's correct.**
7 Q. I'm not going to go through all the rest
8 of them. But Exhibit 63. Same as all the other
9 James Ray sweat lodges?
10 A. **Yes.**
11 Q. Exhibit 64?
12 A. **Yes.**
13 Q. Same as all the other James Ray sweat
14 lodges?
15 A. **Yes.**
16 Q. I'll leave you with this one, Exhibit 62,
17 this woman here flexing her muscles. Is that the
18 same as all the other James Ray sweat lodges?
19 A. **Yes.**
20 MR. LI: Your Honor, I have nothing further at
21 this point.
22 THE COURT: Thank you. Mr. LI.
23 Any redirect, Ms. Polk?
24 MS. POLK: Yes, Your Honor. Just briefly.
25 / / /

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REDIRECT EXAMINATION

BY MS. POLK:

Q. Mr. Mercer, you were just shown a lot of photographs and asked over and over if the photographs that are seen from 2008 are the same as all the other James Ray sweat lodges, and you said over and over yes. Does that include what you saw in 2009?

A. Well, the general look of the people in 2009 -- there were happy people like this in 2009 too. And then there was dead people in 2009, which weren't any other time.

Q. Okay.

A. You know -- none of these pictures that he showed me had really anybody that was really in distress. When they were in distress, we weren't taking pictures, we were helping them. So a lot of these people come around. And I think a lot of the people in 2009 would have come around if the paramedics weren't called except for those three. But it's the same scene.

Q. Let's talk about that same scene. First of all, you just said that when people were in distress, photographs were not being taken?

A. Well, no. Because we were working on

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them. You know -- we're there. We're trying to help them as much as we can. And this is while -- you know -- probably an hour, half an hour or so, after the sweat lodge. So most of the people are back on their feet and moving around again -- most of them. There is a few that still don't know who they are or where they are or what they're doing.

Q. Do you feel that there were people who were in distress that then were not depicted in the photographs you've been shown by the attorneys?

A. Yes.

Q. At all three sweat lodges performed -- ceremonies performed by James Ray that you were present for, were there some people who were, in fact, happy after the even?

A. Oh, sure. There was quite a few.

Q. And did that go for 2009 as well?

A. Yeah.

Q. Would you say that people were disoriented after all three of the sweat lodge events?

A. Yes. Very disoriented.

Q. And were some of the people who were disoriented also smiling?

A. Well, yeah. The one lady that I talked

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to who didn't know her name or where she was, she had a big smile on her face. But she still couldn't tell me what year it was or even what her name was.

Q. You were questioned, Mr. Mercer, about what you meant when you testified that people were more forcefully encouraged in 2009 to either stay in the sweat lodge or go back in. Can you explain for the Court what difference, in your opinion, did you observe in 2009 that resulted in more people staying in that sweat lodge or going back in.

A. The amount of --

MR. LI: Objection, Your Honor. Asks for speculation. Everything was fine until the last part.

THE COURT: The question has to be confined to the observations and contrasting that. So sustained.

Q. BY MS. POLK: Confining your answer to what you observed in 2009, what was different in 2009 from 2007 and 2008 in terms of the encouragement of participants to stay in the sweat lodge or come back in?

MR. LI: Objection as to foundation. Who, what.

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THE COURT: Overruled.

You may answer that if you can.

THE WITNESS: They were more pushy trying to get people in, and they actually tried physically to push one lady back into the sweat lodge. But she -- by the time she got her head in the sweat lodge, she refused, she stopped and she backed up. But they were actually physically pushing her in the butt to go back in.

They would go around to the circle and encourage them. Come on. You can make it. You can do it. But -- you know -- a few of them went in and some of them didn't. One tried and didn't go back in.

Q. BY MS. POLK: Did you observe James Ray being more pushy in 2009 than he had been in previous years?

A. That's kind of hard to say because he was more on the inside of the sweat lodge, and I wasn't in very close contact with him. So I'm not sure exactly what he was saying or doing inside the sweat lodge. But what I saw was the people outside the sweat lodge -- his Dream Team.

Q. And then you were asked, Mr. Mercer, about the number of rocks in 2009 compared to

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1 earlier years and the heat in 2009 compared to
2 earlier years. Does the heat in the sweat lodge --
3 does it have a direct relationship to the number of
4 rocks in the sweat lodge?

5 **A. It depends on how hot the rocks are. And**
6 **after doing sweat lodges and being the fire keeper**
7 **for several, I've gotten better at making the rocks**
8 **hot. So I would say that the rocks in 2007 and**
9 **2008 weren't quite as hot as the ones going in in**
10 **2009 because the ones of 2009 were glowing red even**
11 **during the day. We could see that they were**
12 **extremely hot.**

13 **Q. How is it that you get the rocks to be**
14 **hot?**

15 **A. Two hours before the sweat lodge even**
16 **starts I pile them on a pile of wood and pile the**
17 **wood over the top of the rocks and start the fire.**
18 **And any time that the fire burns down so there is**
19 **an exposed rock, we cover it with another piece of**
20 **wood. So there is never an exposed rock.**

21 **And after a while I got better at it. So**
22 **I could keep the rocks hotter. I could keep the**
23 **fire hotter. And what they want is a glowing red**
24 **rock going in there.**

25 **Q. And it's your testimony that the rocks**
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1 themselves were hotter in 2009 than in previous
2 years?

3 **A. Yes.**

4 **Q. Did you tell James Ray that in 2009?**

5 **A. Oh, yeah.**

6 **Q. And what did he then do or say?**

7 **A. Well, he -- right before they go into the**
8 **sweat lodge, they have a little ceremony on the**
9 **outside of it where they burn their intentions,**
10 **things that they'd like to release or things they'd**
11 **like to attract in their lives.**

12 **He brought me into the middle of the**
13 **circle and had me announce to everybody in the**
14 **circle that -- what I had told him a few minutes**
15 **ago. And that was that the rocks were hotter than**
16 **they had ever been this year.**

17 **Q. Then did James Ray then make a statement**
18 **about it being the hottest fire ever?**

19 **A. He said something, but I can't remember**
20 **exactly what he said.**

21 **Q. What do you remember about what he said?**

22 **MR. LI: Objection. Asked and answered.**

23 **THE WITNESS: I don't know. I don't really**
24 **remember what he said.**

25 **THE COURT: It's been answered. He doesn't**

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1 remember.

2 **Q. BY MS. POLK: And then finally,**
3 **Mr. Mercer, you were asked about what you mean when**
4 **you say that the one lady was having convulsions,**
5 **and you made the statement, well, maybe that one**
6 **lady who was all tensed up wasn't having**
7 **convulsions but others were, and you were referring**
8 **to 2008?**

9 **A. 2008, 2007, 2009. All three of them**
10 **people came out throwing up, sweating and they were**
11 **just a there were a lot of people throwing up right**
12 **at the door.**

13 **And so that's when we grab them and**
14 **dragged them away. They do keep throwing up for a**
15 **while on the side. I wasn't there to take care of**
16 **them then. It wasn't until after the sweat lodge**
17 **was done is when I can really intervene and help**
18 **take care of the people.**

19 **MS. POLK: Thank you, Mr. Mercer.**

20 **Thank you, Judge.**

21 **THE COURT: Thank you, Ms. Polk.**

22 **May Mr. Mercer be excused as a witness,**
23 **Counsel?**

24 **MS. POLK: Yes.**

25 **MR. LI: Yes, Your Honor.**

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1 **THE COURT: Thank you. You will be excused as**
2 **witness for this proceeding. Remember I discussed**
3 **the rule of exclusion?**

4 **THE WITNESS: Yes.**

5 **THE COURT: You can't talk about the case or**
6 **your testimony with other witnesses until the**
7 **hearing is completely over. Okay?**

8 **THE WITNESS: All right.**

9 **THE COURT: Thank you.**

10 **THE WITNESS: Thank you.**

11 **THE COURT: We have about 20 minutes or so.**

12 **MS. POLK: Yes. I can start on the next**

13 **witness. State calls Debby Mercer, please.**

14 **THE COURT: Step to the front of the**
15 **courtroom. Raise your right hand to be sworn.**

16 **DEBRA J. MERCER,**
17 **having been first duly sworn upon her oath to tell**
18 **the truth, the whole truth, and nothing but the**
19 **truth, testified as follows:**

20 **THE COURT: Please be seated here at the**
21 **witness stand. Please begin by stating and**
22 **spelling your full name.**

23 **THE WITNESS: Debra, D-e-b-r-a, Jane, J-a-n-e,**
24 **Mercer, M-e-r-c-e-r.**

25 **THE COURT: Thank you.**

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1 Ms. Polk?
 2 DIRECT EXAMINATION
 3 BY MS. POLK:
 4 Q. Good afternoon, Miss Mercer.
 5 A. Hello.
 6 Q. Will you please tell us the community
 7 that you and your husband reside in.
 8 A. Currently?
 9 Q. Yes.
 10 A. Cornville.
 11 Q. And going back to 2007, were you residing
 12 in the Cornville area?
 13 A. No. I was residing in Angel Valley as
 14 well as Circle City.
 15 Q. Was there some point in time when you and
 16 your husband were actually living at Angel Valley
 17 Retreat Center?
 18 A. Yes.
 19 Q. And when was that?
 20 A. From -- I can't remember the dates
 21 exactly. From March until December of -- no. Give
 22 me a second here. We left in November of '09, and
 23 I believe we moved there March of '07. Something
 24 like that.
 25 Q. And you have been involved in assisting
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1 in some capacity sweat lodge ceremonies at the
 2 Angel Valley Retreat Center?
 3 A. I was involved in three of James Ray's,
 4 but I've done several other ones.
 5 Q. Where have you done the others?
 6 A. Angel Valley.
 7 Q. When have you done the others at Angel
 8 Valley?
 9 A. Throughout that time when I lived there,
 10 from '06 through '09. The first one we did we
 11 volunteered and we weren't living on the property
 12 then.
 13 Q. How many have you done that were
 14 conducted by James Ray?
 15 A. Three.
 16 Q. And what years were those?
 17 A. '07, '08 and '09.
 18 Q. And the number -- what's the total number
 19 again of the sweat lodges you've been involved in?
 20 A. Eight. I'd say eight.
 21 Q. Does that include the James Ray
 22 ceremonies?
 23 A. Yes.
 24 Q. Have you observed differences generally
 25 speaking between James Ray ceremonies and nonJames
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1 Ray ceremonies?
 2 A. Significant.
 3 Q. And what are those?
 4 A. I would say the first thing is the
 5 intention and events leading up to it as well as
 6 how the sweat lodge is performed.
 7 Q. What do you mean when you say
 8 "intention"?
 9 MS. DO: Your Honor, this is my witness now.
 10 I would object to this line of inquiry comparing it
 11 to noneJRI sweats because for the purpose of the
 12 hearing is to determine similarities, if any,
 13 between prior years of Mr. Ray's sweat lodges into
 14 the 2009. We were not given any notice that the
 15 state intended to offer comparison to other sweat
 16 lodges not conducted by Mr. Ray.
 17 THE COURT: Overruled.
 18 You may answer the question.
 19 THE WITNESS: Answer?
 20 THE COURT: You may. Yes.
 21 THE WITNESS: James Ray's intent, in my
 22 opinion, seemed to be more about a gauntlet --
 23 seemed to be more of a gauntlet and more of ego and
 24 to not pay attention to your body. It was a final
 25 thing in his event.
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1 And I would say other events are much
 2 more heart based in that they're more caring, more
 3 loving. The things that happen such as -- in a
 4 typical sweat lodge a person who is having -- a
 5 woman who is having their moon, called "the
 6 period," is not allowed in a sweat lodge. There
 7 is -- it's very strict. And James Ray never even
 8 asks that. It's not a consideration in James Ray's
 9 sweats. And that's regarding the intent.
 10 And in just the preparation for it, he
 11 has people on a Vision Quest beforehand, whereas
 12 most sweats people prepare in a different more
 13 healthy, holistic way.
 14 And then the difference in the actual
 15 event would be in James Ray's sweat lodge in the
 16 first two rounds, he asks for as many rocks as most
 17 sweat lodges have in the entire event.
 18 While they're in the sweat lodge, James
 19 Ray's events are more physically demanding, and
 20 he's more loud and more vocal than a nonJames Ray
 21 traditional sweat lodge. They're more loving.
 22 They're talking. They're singing. Great care is
 23 given to how the people in the lodge are feeling.
 24 There is constantly being asked are you okay? Do
 25 you need water? Does someone need to go out. It's
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1 a real -- it's a much more loving, open kind of a
2 situation in a traditional sweat lodge.

3 Q. BY MS. POLK: Okay. When was the first
4 time that you observed a sweat lodge?

5 A. The first James Ray sweat lodge in '07.

6 Q. In 2007?

7 A. Yes.

8 Q. What was your reaction to the sweat lodge
9 ceremony conducted by James Ray conducted in 2007?

10 A. I was pretty shocked. I had never
11 experienced a sweat lodge, period. And then to see
12 that in that extreme with people in such states of
13 distress, I couldn't imagine why people would do
14 that in the first place and then how someone could
15 offer that as something to do. So I was pretty
16 shocked.

17 Q. What about the 2007 sweat lodge ceremony
18 by James Ray shocked you?

19 A. The condition of the people during the
20 event and after and just James Ray's general
21 demeanor and being about it. He just seemed to be
22 separate from what was going on.

23 Q. And what do you mean by that?

24 A. He was there. He was pouring the
25 ceremony. He was in charge. He was in control.

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1 But afterwards he kind of stayed separate and
2 walked away and was in a different area and wasn't
3 there.

4 Because, like, for me it was shocking to
5 see people on the ground -- you know -- throwing up
6 and crying. And as a leader of an event, I would
7 think you would go around and be talking to the
8 people and trying to -- you know -- console them or
9 talk to them. But he didn't. He just walked away.

10 Q. In 2007 what was your role? What
11 capacity were you there in?

12 A. I was there as the fire tender's
13 assistant. So the fire tender would take the rocks
14 out of the fire, bring them to a stone, and I would
15 brush them off and hand it off to somebody inside
16 the sweat lodge.

17 Q. Okay. At what point did you see things
18 that were shocking to you in 2007?

19 A. By the second round.

20 Q. What did you see in the second round?

21 A. People coming out in a state of distress
22 and really hot and throwing up and I'd say a state
23 of distress.

24 Q. Did you do anything -- did you personally
25 do anything when you saw people coming out who

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1 were, in your words, in distress?

2 A. Yes. The first one, one of the most
3 shocking things that happened was by the third
4 round a lady was on her way out. She made her way
5 around to the door of the sweat lodge. And as she
6 stood up to get out, she passed out right in the
7 doorway. And that was my first experience.

8 I turned her over, and her eyes are
9 floating back in her head, and her face is all
10 bloody. And -- you know -- I just dragged her away
11 out of the doorway because somebody else was coming
12 up behind them throwing up. And that was shocking
13 to me. I had never -- you know -- experienced
14 being that close to somebody doing like that. And
15 then it just goes on -- you know.

16 Q. To what extent did it go on?

17 A. I mean, more people -- the sweat lodge
18 continued, and more people -- you know -- would
19 come out in that same state of distress.

20 Q. About how many people would you say in
21 2007 came out of that sweat lodge in some sort of
22 state of distress?

23 A. At least half.

24 Q. Do you know how many were in there in
25 2007?

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1 A. I think -- I can't remember exactly, but
2 my guess is, like, 58. And yeah, there was -- I
3 counted. There was, like, 25 to 28 people out
4 because I remember thinking -- you know -- half of
5 the people are out of this. Why would you do this
6 when half of the people can't handle it?

7 Q. Why would you continue on, you mean?

8 A. Yes.

9 Q. Were you doing anything to assist the
10 people who were coming out as the ceremony was
11 going on -- you personally?

12 A. Yes.

13 Q. And what were you doing?

14 A. I would give them water or wipe their
15 faces if they were throwing up. Most of the time
16 they would just collapse. You know -- they'd get
17 to the door of the sweat lodge and then collapse.
18 And a lot of times it was just moving them out of
19 the way so other people could get out -- you
20 know -- and then give them towels or water. The
21 first two years there was just water. The last
22 year there was fruit.

23 Q. And in 2007 before you did the first
24 event, did you understand that was going to be
25 expected of you?

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1 **A. No. And I think it was more of a human**
 2 **part of it. Because when I -- when that first**
 3 **started happening, I was a little panicked. And**
 4 **the manager of the property was on duty. And,**
 5 **like, what do we do? And he's, like, you let it**
 6 **happen. It's James Ray's event. He's the pourer.**
 7 **You let it happen.**

8 **Q. Is that sweat lodge at the Angel Valley**
 9 **Center located near a creek?**

10 **A. Yes.**

11 **Q. What creek is that?**

12 **A. I think it's Oak Creek.**

13 **Q. And in 2007 did one of the participants**
 14 **go down to the creek?**

15 **A. Yes.**

16 **Q. What do you remember about that?**

17 **A. He was an older gentleman. He came out**
 18 **saying he had a heart condition and he was really**
 19 **hot and get him to the water. Get him to the**
 20 **water.**

21 **He didn't have shoes on. He just took**
 22 **them off. And worrying about him -- you know -- I**
 23 **walked with him. And he went right in the water**
 24 **which -- and he was not aware of what he was doing**
 25 **at all. Later we talked to him, and he didn't**

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1 **remember doing that at all, which was common in**
 2 **those events. Afterwards they didn't remember what**
 3 **had happened right afterwards.**

4 **Q. And what happened to that older gentleman**
 5 **after going into the water?**

6 **A. I talked to him later -- you know -- that**
 7 **day, but I don't know.**

8 **Q. Okay. In 2008 you were also present?**

9 **A. Yes.**

10 **Q. And in 2008 a new sweat lodge was**
 11 **constructed; is that correct?**

12 **A. Yeah. The -- James Ray's team asked us**
 13 **to build a bigger sweat lodge to accommodate more**
 14 **people.**

15 **Q. Did you take photographs of the**
 16 **construction of the lodge in 2008?**

17 **A. While we were constructing it? Yes. The**
 18 **kiva is what it's called. The kiva is the actual**
 19 **willow wooden frame. And it becomes a sweat lodge**
 20 **when the tarps are put over it.**

21 **Q. Okay. And I'm going to put up on the**
 22 **overhead Exhibit 17. Is this a photograph that you**
 23 **took?**

24 **A. Yes.**

25 **Q. And this was the construction of the**

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1 sweat lodge in 2008?

2 **A. Yes.**

3 **Q. I'm going to put up on the overhead**
 4 **Exhibit 18. Is this also a photograph you took?**

5 **A. Yes.**

6 **Q. And this is the kiva you're referring to?**

7 **A. Yes.**

8 **Q. And I'm going to put up on the overhead**

9 **Exhibit 21. Is this also the construction of the**
 10 **sweat lodge in 2008?**

11 **A. Yes.**

12 **Q. And another photograph that you took?**

13 **A. Yes.**

14 **Q. And then finally I'm going to put up here**

15 **Exhibit 19. Is this also the 2008 sweat lodge?**

16 **A. Yes.**

17 **Q. And is that you?**

18 **A. That's me and my dog.**

19 **Q. Were you able to stand up in it?**

20 **A. No. Not totally. You could -- you**
 21 **know -- bend over, but you could not stand up in**
 22 **it.**

23 **Q. In 2007 by the end of the sweat lodge,**
 24 **how many people would you say were left inside?**

25 **A. About half.**

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1 **Q. And with respect to the people that you**
 2 **observed in distress in 2007, did you have an**
 3 **opinion about whether or not they should have been**
 4 **taken to the hospital?**

5 **MS. DO: Objection. Foundation.**

6 **THE COURT: Again, it's her personal**
 7 **observation. So overruled.**

8 **THE WITNESS: My personal observation is hell,**
 9 **yeah. Excuse me. But yeah. It personally**
 10 **bothered me to see people do that. Like, in**
 11 **working at Angel Valley, I've learned that people**
 12 **do different things. It's -- you know -- not my**
 13 **opinion that may matter.**

14 **Q. BY MS. POLK: In 2008 -- we started to**
 15 **talk about 2008 and your being present when James**
 16 **Ray conducted a sweat lodge ceremony there.**

17 **A. Yes.**

18 **Q. Do you recall approximately how many**
 19 **people were present in 2008?**

20 **A. I know there was 73 people around that**
 21 **were there. And I think 68 or so were in the**
 22 **lodge.**

23 **Q. And by the time that the ceremony in 2008**
 24 **came to an end, about how many people were still**
 25 **inside the sweat lodge?**

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1 **A. Again, I think there was about half and**
 2 **half. And that one a lot -- a lot of people were**
 3 **going in and out more where someone would come out**
 4 **and then go back in. In some cases -- you know --**
 5 **they'd come out every round.**

6 **James was not quite as controlling, I**
 7 **don't think, in that round. Because, like I said,**
 8 **people were coming out every round and going back**
 9 **in. And they'd get water and cool off and then**
 10 **they'd go back in.**

11 **So -- still at the end about half of them**
 12 **were out and the same state of distress -- you**
 13 **know -- either vomiting, crying -- you know --**
 14 **having a hard time breathing, shivering, shaking.**

15 **Q. Do you know a woman named Barbara Waters**
 16 **from 2008?**

17 **A. I may know her, but I don't know.**

18 **Q. Can you recall any specific instances of**
 19 **people in distress in 2008 that concerned you?**

20 **A. I know a lady went into shock, I think,**
 21 **in both 2007 and eight where --**

22 MS. DO: Objection, Your Honor. Foundation.

23 THE COURT: Sustained.

24 **Q. BY MS. POLK: In 2008 your testimony is**
 25 **that a lady went into shock. How do you know that?**

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1 **A. She went into a state I would consider**
 2 **shock where she didn't have control of her --**

3 MS. DO: Objection, Your Honor. Foundation.

4 THE COURT: Overruled.

5 THE WITNESS: She had no control over her
 6 body. Her body was seizing up -- you know -- into
 7 spasms and she had no control over her body. She
 8 was very freaked out and her body was spasming.
 9 And they ended up taking her from the area and
 10 putting her in a bathtub.

11 **And I'm -- I wasn't there for what**
 12 **happened after that. But I think there was a**
 13 **doctor present at that one. And he, basically,**
 14 **took care of her. And he's the one who said she**
 15 **was in shock. But my opinion -- I mean, she --**

16 MS. DO: Objection, Your Honor. Foundation
 17 and hearsay.

18 THE COURT: It really is hearsay again. I'm
 19 going to consider the weight that should be given.
 20 I really can't give weight to that. So in this
 21 hearing I do want to proceed with testimony. I'm
 22 not going to consider the hearsay answer, though.

23 **Q. BY MS. POLK: Again, in 2008 what were**
 24 **you doing about people that were in distress?**

25 **A. Same thing. Providing assistance; giving**

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1 **water, towers; cooling them off; trying to get them**
 2 **out of the area. Because, like I said,**
 3 **consistently they would get to the door and drop**
 4 **from the difference in temperature from the heat**
 5 **from the outside -- I mean heat from the inside to**
 6 **the outside.**

7 **But consistently they would drop at the**
 8 **door. You would be -- you know -- dragging them**
 9 **off to tarps. Because we set up tarps to be able**
 10 **to pull the people so they weren't laying in the**
 11 **dirt.**

12 **Q. In 2008 were you ever by the door of the**
 13 **sweat lodge?**

14 **A. Yes. That's when I was assistant door**
 15 **tender, I guess you would call it.**

16 **Q. And did you ever hear James Ray in 2008**
 17 **say anything to the participants about staying in**
 18 **the sweat lodge?**

19 **A. No. I remember him saying if you have to**
 20 **go out, go out and come back in -- you know -- come**
 21 **back in. It felt much more open about being able**
 22 **to go out and come back in.**

23 **Q. Much more open than what?**

24 **A. Than 2009.**

25 **Q. So in 2008 your testimony is that people**
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1 were encouraged to come and go as they needed?

2 **A. Yeah.**

3 **Q. Let's talk about 2009, then. You were**
 4 **present in 2009 when James Ray conducted a sweat**
 5 **lodge ceremony?**

6 **A. Yes.**

7 **Q. And what was your role in 2009?**

8 **A. I was the door tender.**

9 **Q. And as door tender were you able -- you**
 10 **were at the door of the sweat lodge on numerous**
 11 **events -- numerous times?**

12 **A. The whole time. I'm there the whole**
 13 **time.**

14 MS. DO: Your Honor, I would object to this
 15 line of inquiry. The court's already determined
 16 the state has established the necessary offer.
 17 It's gone beyond the scope of the 404(b) hearing.

18 THE COURT: Ms. Polk, for one thing, it is
 19 time to recess. But, Ms. Polk, with regard to the
 20 scope of the hearing, we've gotten into a lot of
 21 areas that I think are beyond what's strictly
 22 necessary. But the specific relevance of the last
 23 question to what you want this court to consider in
 24 the 404(b) context?

25 MS. POLK: Judge, the relevance would be that
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1 events happened in 2007 similar to 2008 and that
2 are similar to 2009. The difference, then, is in
3 2009 how James Ray conducts the ceremony that, in
4 contrast to 2007 and 2008 when people clearly are
5 sick and in distress, by the end of the ceremony
6 more than half of them are already out.

7 In 2009, in contrast, participants are
8 strongly pressured to stay inside. And this
9 witness can talk about the things she heard James
10 Ray say that resulted in so many people still being
11 in the sweat lodge by the end of the ceremony in
12 2009.

13 THE COURT: My question is this: I can see
14 that as a trial issue and that type of testimony.
15 But in terms of 404(b) and how these other acts may
16 show notice, knowledge, those various things,
17 that's what I'm having difficulty with.

18 We talked about this at the very start --
19 what happens in 2009 and how that's going to show
20 this -- well, those various exceptions under
21 404(b).

22 So I'm going to sustain the objection as
23 noted. You made an offer of proof, a detailed
24 offer of proof at this point. And we will recess
25 for the evening at this time.

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1 Ms. Polk, what about witnesses? Well, I
2 want to excuse Miss Mercer for the evening anyway.
3 And Miss Mercer, I've been telling the
4 witnesses the rule of exclusion of witnesses has
5 been invoked in this case. That means you can't
6 talk to other witnesses about your testimony about
7 this case in any way until this hearing is over.
8 And this hearing is going to go into tomorrow
9 anyway.

10 And I understand your husband has been a
11 witness. So there is going to be a natural
12 temptation to be discussing the case and testimony.
13 You just cannot do that.

14 THE WITNESS: I understand.

15 THE COURT: You can talk to the lawyers,
16 though. You can do that if you have any questions
17 about the rule and what it means.

18 But you understand as I've explained it?

19 THE WITNESS: Yes. I will zip my lip.

20 THE COURT: Okay. Thank you very much. You
21 may step down.

22 THE WITNESS: Thank you.

23 THE COURT: We'll resume tomorrow at
24 9:00 o'clock, then.

25 And, Counsel --

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1 THE WITNESS: Do you want me tomorrow at 9:00?

2 THE COURT: Yes.

3 (The witness leaves the room.)

4 THE COURT: And if there is anything else to
5 discuss just of a legal nature, I can just do that.
6 I think there was some concern about working with
7 the electronics, and we have some time to do that.

8 Ms. Polk, is there anything else you want
9 to take up before the recess?

10 MS. POLK: May I have a moment, Your Honor?

11 THE COURT: Yes.

12 MS. DO: Your Honor, we do have one issue we
13 wanted to raise.

14 THE COURT: Ms. Polk, did you have anything?

15 MS. POLK: Your Honor, I just wanted to follow
16 up on the conversation we had at the end of the
17 testimony of Debbie Mercer.

18 Again, the state has to prove that the
19 defendant acted recklessly and that his actions --
20 that he shows a substantial -- that he's aware of
21 and consciously disregards a substantial and
22 unjustifiable risk that the result will occur and
23 that that risk is of -- it's disregarded. The risk
24 constitutes a gross deviation from the standard of
25 conduct that a reasonable person would observe in

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1 the situation.

2 So that's what we have to prove because
3 that's the mental state required to prove
4 manslaughter. Under 404(b), then, one of the
5 exceptions is evidence that will prove intent. And
6 so the intent that we are proving is this mental
7 state of acting recklessly. And that's where
8 drawing that connection between 2009 and the prior
9 sweat lodges is so relevant.

10 If it's the Court's ruling that the rest
11 of that argument can be made at trial, then I don't
12 need to keep going into 2009. But what the
13 evidence shows is that in spite of problems in 2005
14 and then again in 2007 and 2008, that the defendant
15 pushes even harder in 2009 and is disregarding --
16 is consciously disregarding the problems that his
17 sweat lodge presented for participants in the
18 earlier years.

19 And by the time he gets to 2009, he's
20 pushing even harder, pressuring participants to
21 stay in that sweat lodge so that by the end of the
22 sweat lodge we have more people still inside the
23 sweat lodge and obviously we have people in more
24 advanced states of medical distress, including the
25 two who are deceased at the scene and then the one

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1 who dies 10 days later.

2 And so that's the issue I'm having with
3 proving intent, which is one of the exceptions
4 under 404(b) for other acts and how that ties in to
5 what we have to prove at trial, which is this
6 mental state of reckless. And that's a connection
7 I would make.

8 THE COURT: Mr. Li, did you have anything else
9 to say on this?

10 I know, Ms. Do, you have the last
11 witness. Mr. Li has addressed this primarily from
12 the start of the proceeding.

13 And I don't know if you have anything
14 else.

15 MR. LI: I think the Court understands our
16 position. We understand that that's what the state
17 wants to prove at trial, and we get that that's
18 what our trial in February is going to be about.

19 I think we've heard a lot of evidence
20 about 2009. We dispute the meaning of it and all
21 of that. But I don't think there is any reason to
22 continually talk about 2009. We understand what
23 the state wants to prove.

24 The only question is in 2005, 2006, 2007,
25 2008, are those -- have the prior acts, quote,
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1 unquote, been proven by clear and convincing
2 evidence; and did, quote, unquote, the defendant
3 commit them? That's what Terrazas holds, and
4 that's all that this court is supposed to be doing
5 right now.

6 THE COURT: I think I have a good picture now
7 of what's being alleged for October 2009. And I
8 don't see the need to really go into the detail,
9 essentially, the case that the state intends to
10 prove at the trial itself.

11 MS. POLK: And, Judge, I don't need to go into
12 detail. I'm just concerned that the third prong of
13 Terrazas test is relevance. How are the events
14 from the prior years relevant to 2009? And that's
15 what I'm getting at. They're relevant because
16 that's how we show this mental state of acting
17 recklessly.

18 THE COURT: I understand the argument.
19 Ms. Do.

20 MS. DO: Thank you, Your Honor. I just wanted
21 to inquire and get a little bit of guidance from
22 the Court. I understand the Court indicated at the
23 outset that 104(a) applies. And for tomorrow I
24 understand that Detective Diskin will be taking the
25 stand and introducing hearsay statements of at
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1 least 21 witnesses.

2 Throughout the day there seem to have
3 been objections from the state regarding hearsay
4 exception. And I think we're a little bit confused
5 here. It seems that the Court is allowing based
6 upon the state's proffer hearsay coming in without
7 exception because of 104(a), yet we're holding the
8 hearsay exceptions of prior inconsistent statements
9 and whatnot. It seems to apply. Is hearsay coming
10 in or is it not coming in is my question?

11 THE COURT: There are times in pretrial
12 hearings hearsay is admitted. You look for indicia
13 of reliability. There may be some type of
14 corroboration or something that gives it some
15 reliability.

16 The hearsay rules are just not strictly
17 followed. The Court's going to not give a lot of
18 weight to hearsay. And the rules of evidence don't
19 strictly apply. But certainly if either party
20 wants to have evidence considered and given any
21 degree of weight, then hearsay is not a good way to
22 be offering that evidence would be my general
23 observation about that.

24 Do you have a different view of what --
25 how 104 applies, Ms. Do?

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1 MS. DO: No, I don't. And if the state --
2 we've had some meet and confer on this issue prior
3 to the hearing. If the state wishes to introduce
4 hearsay and feels comfortable with that, I think
5 that's the state's prerogative.

6 I think from the defense side we just
7 wanted a little bit of guidance that if we're doing
8 hearsay, then when we seek to introduce a prior
9 inconsistent statement, are we being held to the
10 standard of establishing the exception to the
11 hearsay rule is my question? I think I understand
12 the Court's --

13 THE COURT: With the prior inconsistent
14 statement, I think a lot of that has to do with
15 fairness to a witness and giving a witness an
16 opportunity to testify. And then, as Ms. Polk
17 indicates, if there is an inconsistent statement,
18 that's when it's brought up. And the opposing
19 counsel has a right to see it right at that time.
20 And if extrinsic evidence is going to come in, then
21 the witness has to be given an opportunity to
22 explain that before the extrinsic evidence comes
23 in.

24 So in that case it's a matter of fairness
25 to a witness, in my view. But you're technically
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1 correct. I wouldn't have to go by the rules of
2 evidence on that either, I suppose.

3 MS. DO: Thank you. No. We understand that.
4 We understand that position.

5 THE COURT: Anything else, then, from the
6 defense?

7 MS. DO: No, Your Honor.

8 THE COURT: I'll go back, Ms. Polk, because
9 the parties are disagreeing about the scope of the
10 hearing. I can see your argument. You're
11 concerned that the defense might say based on law
12 they've cited in their brief, we really need to
13 have a real identity, close match, between the
14 alleged prior conduct or act and what happened
15 presently.

16 And with that position I can see why you
17 might not want to be, essentially, putting quite a
18 bit of your case on at this point to say here it
19 is. This is what we're saying happened in October
20 2009, and it's very similar to what happened
21 before. So I think that's what you're saying.

22 Other than that, once I have the view of
23 your basic theory and what's established and what's
24 going to be at issue, I think all I really need to
25 know is whether or not there is clear and

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1 convincing evidence establishing prior acts and
2 whether or not what we've called exceptions under
3 404(b) apply -- one or more of them. That's the
4 way I see that. That's not -- we don't seem to be
5 connecting on this.

6 MS. POLK: No, Judge. I think that we are.
7 And under 404(b) prior acts come in for a number of
8 reasons. And the state in this case is offering it
9 for a number of reasons -- intent, opportunity,
10 knowledge, as well as absence of mistake or
11 accident. And all of them are relevant.

12 It's the intent piece that I brought up
13 at the end of the day today because the state,
14 again, has to prove this mental state of
15 recklessness. And I believe we can prove the
16 recklessness only by having the jury consider what
17 happened before.

18 If you look at 2009 in a vacuum, it's a
19 very different picture of what you understand from
20 2009. If you understand the prior sweat lodges and
21 all the people in various stages of distress, what
22 is done for them, what is not done for them, and
23 you look at, well, how did Mr. Ray react? Did he
24 change anything? And if he did, did he make
25 changes to take care of the problems, or did he

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1 make changes, in fact, to make the situation even
2 worse?

3 THE COURT: Okay. I'll think about the issue
4 some more now that it's been presented.

5 I do want to say one thing relating to my
6 view of Terrazas and the requirement of proving an
7 act by clear and convincing evidence. Some
8 attorneys, judges, I think, are of the opinion that
9 the duty is to -- of the state -- the burden of the
10 state is to show that a jury may find that there is
11 clear and convincing evidence, almost a Rule 20
12 type of standard.

13 Well, I've looked at the cases, Terrazas,
14 and I think of 404(c) cases which are somewhat
15 similar. When I look at those, I think that the
16 Court has to be satisfied that there is clear and
17 convincing evidence, not that the Court can decide,
18 similar to a Rule 20, well, it's a jury question
19 now whether or not there is a clear and convincing.
20 Of course, in a jury trial the issue is beyond a
21 reasonable doubt in a Rule 20.

22 I think the Court actually has to hear
23 what the Court believes is clear and convincing
24 evidence before an act -- a prior act can come in.

25 Does anybody disagree with that? I've
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1 seen that debated.

2 MR. KELLY: No, Judge. I don't disagree with
3 that. I'm still somewhat concerned on behalf of
4 Mr. Ray if now this afternoon Ms. Polk is arguing
5 intent as one of the exceptions to 404(b). To me
6 all this appears to be is an attempt to admit
7 improper character evidence.

8 Intend means the intent to commit a
9 crime. It would be evidence, prior-act evidence,
10 establishing by the clear and convincing standard
11 that James Ray intended to kill three people. So I
12 guess I'm completely lost on the intent argument as
13 one of the exceptions to 404(b).

14 Judge, I ask you to consider this because
15 I was trying to think of an analogy as I'm sitting
16 here today. If this were a manslaughter case where
17 the state was alleging recklessness due to the
18 reckless operation of an automobile that the
19 defendant was driving fast, operating the vehicle
20 in a reckless manner, he rolls it and kills
21 someone, standard manslaughter case involving an
22 automobile.

23 Then would the State of Arizona be able
24 to bring witnesses to outline the defendant's
25 driving history and provide testimony that on a

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1 particular date in 2007 I was riding with the
2 fellow, and he was driving recklessly? In 2005 I
3 was riding with this fellow, and he was speeding in
4 his car and he was reckless.

5 And clearly the answer is no because it's
6 incumbent upon the State of Arizona to prove, if it
7 can, Mr. Ray's guilt beyond a reasonable doubt
8 given the facts which existed in October of 2009
9 and not some implication that he's simply a bad
10 person because people got sick on these prior
11 occasions and they got whatever -- some of the
12 testimony today was they had to be hosed down, that
13 they came out and passed out.

14 And you can see the wide range of
15 disparity between Mr. Li's cross-examination and
16 Ms. Polk's direct as to factually what happened,
17 which speaks to the clear and convincing standard.

18 But I keep going back to relevance. And
19 I ask you to consider my analogy. That would be
20 highly improper to bring in a person's driving
21 record that was never charged as a crime to show
22 somehow some type of consciousness of guilt when he
23 was operating the automobile, which resulted in the
24 death of a person.

25 Anyway, those are my thoughts, Judge.
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1 MR. LI: Your Honor, I just have one small
2 point about the identity test between the two
3 circumstances. I think the case is Woody. It's
4 not identity of circumstances. It's identity of
5 injury that has to be shown.

6 So what the state is showing is or
7 attempting to show is, essentially, here's all the
8 things that happened in 2009. And now we're going
9 to show a bunch of actions and circumstances in
10 conformity therewith, which, frankly is not
11 appropriate.

12 But that's not the test that 404(b)
13 involves. It's did the same injury take place;
14 and, therefore, is it foreseeable or does it impact
15 on various -- on the various exceptions in the
16 404(b) test. I'm sorry. I misspoke about the
17 foreseeable part.

18 But that's the test, identity of injury,
19 not identity of circumstances, not is this act
20 similar to the other act back -- you know -- in its
21 entirety.

22 It's what is the injury.

23 THE COURT: Ms. Polk, if you have a different
24 view of Terrazas than mine, which is the state has
25 to actually show the Court that these events

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1 occurred. And the standard is clear and
2 convincing. It's not this more abstract notion
3 that I've seen.

4 MS. POLK: No, Judge. I agree with your
5 interpretation of Terrazas.

6 THE COURT: All right. I'm going to think
7 about -- go back and reread the briefing. Mr. Li
8 indicates it has to do with showing the same
9 injury. I can see how that would relate to perhaps
10 one of the items listed -- exceptions listed in
11 404(b).

12 And we'll resume at 9:00 o'clock. Thank
13 you.

14 (The proceedings concluded.)
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Mina G. Hunt (928) 554-8522

1 STATE OF ARIZONA)
2 COUNTY OF YAVAPAI) ss: REPORTER'S CERTIFICATE
3

4 I, Mina G. Hunt, do hereby certify that I
5 am a Certified Reporter within the State of Arizona
6 and Certified Shorthand Reporter in California.

7 I further certify that these proceedings
8 were taken in shorthand by me at the time and place
9 herein set forth, and were thereafter reduced to
10 typewritten form, and that the foregoing
11 constitutes a true and correct transcript.

12 I further certify that I am not related
13 to, employed by, nor of counsel for any of the
14 parties or attorneys herein, nor otherwise
15 interested in the result of the within action.

16 In witness whereof, I have affixed my
17 signature this 19th day of February, 2012
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24 MINA G. HUNT, AZ CR No. 50619
25 CA CSR No. 8335

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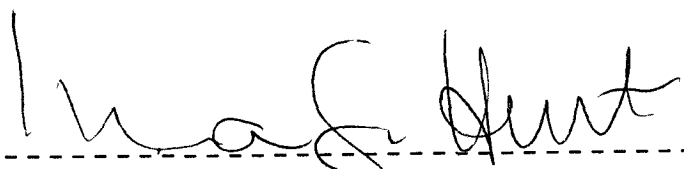
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